# The Solicitors' Journal

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CONTENTS



# CURRENT TOPICS

### "The Solicitors' Journal"

MOST readers will be aware that by an arrangement between the Ministry of Fuel and Power and the Periodical Proprietors' Association all weekly periodicals have undertaken to suspend publication for at least two consecutive weeks immediately following the 15th February, in order to economise in the use of electric power. This means that no further issue of THE SOLICITORS' JOURNAL will appear until, at the earliest, the 8th March, when we hope to resume publication if conditions allow.

### Sir Ellis Hume-Williams, K.C.

THE RIGHT HON. SIR ELLIS HUME-WILLIAMS, K.B.E., K.C., who died on 4th February at the age of eighty-three, was a man of wide attainments. His father was a doctor in Dublin who himself became a member of the Bar. At Trinity Hall, Cambridge, the son distinguished himself by winning the Cressingham prize and in 1881 was called to the Bar by the Middle Temple. He was Recorder of Bury St. Edmunds from 1901 to 1905, and later became Recorder of Norwich. In 1899 he had taken silk and became a member of the Bench of his Inn in 1906, and treasurer in 1929. After three unsuccessful attempts to enter Parliament, beginning in 1895, he became member for Bassetlaw in 1910, and remained its member until 1929. Throughout the 1914–18 war, Hume-Williams served in an ambulance corps. In 1916, he was made British Red Cross Commissioner in Petrograd on being sent to Russia to present a fleet of Red Cross ambulance cars to the Russians. He was later appointed liaison officer between the War Trade Department and the Commission Internationale de Ravitaillement, and also liaison officer between the English and the American Red Cross. In 1918, he was made a K.B.E., a baronet in 1922 and a Privy Councillor in 1929. In November, 1930, he retired from practice at the Bar, where he had had one of the finest divorce practices of his generation. His retirement by no means left him without occupation. He wrote his biography "The World, the House and the Bar," and was a frequent correspondent to *The Times* on topics of the day. During the war when barristers were few and divorce figures were rising, Sir Ellis patriotically came forward to take his share of the poor persons' divorces, and he has also sat as Commissioner of Assize in divorce. Especially in these critical times we can ill afford to lose the wise counsel of such a man.

### Two Retirements

EVERYBODY who has had work before Mr. Justice CHARLES will regret his retirement and miss his cheerful presence on the Bench. He has been a judge of the King's Bench Division since 1928 and a Bencher of the Inner Temple since 1922. Called to the Bar by the Inner Temple in 1896, he enjoyed a good High Court practice before his elevation to the Bench. His gift of vigorous comment enlivened many a case, and he showed special interest in any matters connected with the art of boxing, of which he had some experience. One of the last *causes célèbres* which he tried was *Hennessy* v. *Boyanton*, which resulted in a medical practitioner being restored to the register by the General Medical Council. We wish him a happy retirement. We extend our sympathy to Mr. CLAUD MULLINS, the South-West London police court magistrate, who has had to retire on account of ill-health. Few have given so much of themselves to their work as has Mr. Mullins, and those who have visited his court are well aware of the trying conditions under which he worked. His beneficial innovations in the administration of criminal justice will long be remembered, and have already had their effects beyond the boundaries of his particular court. We wish him, too, a happy retirement and better health.

### Reconciliation and Divorce

THE radical proposals in the third and final report of the Denning Committee on Procedure in Matrimonial Causes (Cmd. 7024, Stationery Office, 9d.), which has now been issued, go much further than the establishment of reconciliation machinery for bringing the parties together after divorce proceedings have commenced. What is envisaged is a sort of marriage welfare service, not managed by the State but to some extent officially sponsored. General education for marriage and parenthood, and specific marriage preparation of engaged couples, are already being attempted by unofficial bodies, and the report considers that an extension of this work is much to be desired. Among institutions to receive encomiums from the Committee are the probation service, the service departments, the church organisations, the Family Welfare Association and the Marriage Guidance Council (formed in 1938). Prospects of reconciliation are, as a rule, very small by the time the conflict reaches a hearing in the Divorce Courts, the Committee notes. In some respects the law of condonation and collusion is said to hamper attempts at reconciliation, for the would-be petitioner is reluctant to

make or accept advances lest he endanger his case where grounds for divorce exist. It is also recommended that the court welfare officers should be available to advise and guide the parents about the children and should represent the interests of the children before the court. Of the other more technical proposals concerning custody, alimony, maintenance, security for costs, and the *Russell* v. *Russell* rule, more detailed consideration must be reserved for our contributor on divorce subjects, while we are content to hail these reconciliation proposals as a big step in the direction of a return to sanity.

### Solicitors and the Closed Shop

In a recent paragraph we referred to the popular illusion that such organisations as The Law Society are trade unions and can apply any rule analogous or similar to the "closed shop" principle which is so fashionable in trade union circles. A practical example of the impossibility of treating solicitors on anything like this basis occurred last month when an advertisement by Barrow Corporation for an assistant solicitor stated that one of the conditions of the office was that the person appointed should be a member of an appropriate trade union, in conformity with a resolution of the council. A member of The Law Society in Liverpool told a representative of the *Liverpool Daily Post*, according to the issue of that paper for 23rd January, that he had never before seen such a condition in an advertisement for a legal post. There is no reason why a solicitor should not join the National Association of Local Government Officers if he wishes, and the Association admits him, for that, it would seem, is the appropriate trade union, and certainly not The Law Society. But it is a matter for action by The Law Society if any outside body seeks to bind members of The Law Society by arbitrary rules of this sort.

### The Chairman of the Justices

One of the things which advocates in the magistrates' courts find sometimes embarrassing and sometimes harassing, is the tendency of some clerks to justices to dominate the court, and almost to seem to usurp the place of the chairman of the magistrates. For advocates to be subjected to interruption by a person who is, strictly speaking, not a member of the court is not only annoying, but frequently detracts from the efficiency and dignity of the proceedings and of the bench itself. Many solicitors will, therefore, emphatically agree with Sir Leonard Costello, chairman of Devon Quarter Sessions, who supported a recommendation before the Royal Commission on Justices of the Peace, on 31st January, that permanent chairmen should be appointed to the magistrates' courts. Under the rota system in petty sessional divisions, he said, no one magistrate took the chair more than three or four times a year, and a new magistrate might find himself in the chair on his first or second appearance in court. This put enormous power into the hands of the clerk, as it sometimes happened that an inexperienced chairman was constantly bending over the clerk, asking, "What do I do next?" The Committee further recommended that magistrates should not act for twelve months after acceptance of a judicial commission, but should attend courts during that time and take steps to make themselves efficient. Those who consider that every effort should be made to retain the system of lay justices in preference to the extension of a professional bench in the magistrates' courts will probably consider the Devon Committee's recommendations both practical and a logical step forward in the evolution of the present system. Although views inside the legal profession are divided on the subject of lay versus professional justices, all are agreed that reforms are needed, and that suggested by the Devon Committee seems both important and easy to achieve.

### Education of Justices

At a time when it is generally recognised that justices must prepare themselves for their responsible duties, commendation is due to two recent publications, which should go far towards providing prospective members of the bench with the essential knowledge which they must have in order efficiently to perform their duties. The first is a revised edition of "The Probation Service, its Objects and Organisation," published by H.M. Stationery Office (6d.). Here in twenty-three pages the would-be justice of the peace will find an adequate explanation of the value and importance of probation, the duties of the probation officer and the organisation of the service. The other valuable work is published by Justice of the Peace, Ltd., who are the proprietors of the *Justice of the Peace and Local Government Review*, and is priced moderately at 2s. 6d. The main statutes relating to the duties of justices are simply explained, and such essential matters as the probation service, juvenile courts, guardianship and adoption, bastardy and domestic cases, and legal aid for the poor all figure in this work, which is in every way an ideal little introduction to the work of justices. Those justices who have the wisdom or good fortune to study a copy of this booklet will end it with a fuller appreciation of the antiquity and dignity of their office and of the tremendous importance of the position which it occupies in the modern social fabric.

### Juvenile Crime and Reform

Lord Templewood is in the forefront of those who have given a great part of their lives to the study of the problem of juvenile crime, and his latest public statement on it, to the recently established Department of Criminal Science, in the School of Law at Cambridge, on 31st January, is of the utmost importance. It is the young, he said, who most easily become recidivists, and it is the young who are most susceptible to wise methods of reform. The figures of juvenile crime were rising before the war, having increased by 125 per cent. between 1907 and the beginning of the war. The figure for boys under seventeen, guilty of housebreaking and similar crimes, had risen from 6,658 in 1938 to 13,214 in 1945, and for girls under seventeen from 109 to 450. Release and probation, he said, had developed empirically and sometimes haphazardly, but there was need for a full and sympathetic investigation based on actual experience. Lord Templewood thought that too little attention was paid to after-care when the period of probation was over. Wisely applied training under suitable conditions had produced notably more satisfactory results than probation, particularly where followed by an effective system of after-care. He suggested that the Home Office should collect the fullest possible statistics as to probation and circulate data from actual experience. If the young were kept out of prison, as had been proposed in the Criminal Justice Bill of 1938, alternative punishments were necessary, and for that reason he had proposed attendance centres and residential hostels, from which young offenders could continue to attend their daily work. Punishment, he aptly observed, must fit not so much the crime as the criminal, not only to enforce retribution for past offences, but, more important, to prevent the offender repeating them. It is to be hoped that Lord Templewood's assistance will be used to the full in early reconsideration of the Criminal Justice Bill.

### References to Rent Tribunals

Up to the end of 1946, 4,752 cases were referred to 69 rent tribunals operating in England and Wales under the Furnished Houses (Rent Control) Act. According to figures issued on 1st February, 1947, by the Ministry of Health, rent reductions were made in 1,785 out of 2,218 cases decided by tribunals, and the mean percentage reduction in cases in which rents were reduced was 33 per cent. Rents were approved in 193 cases, and 234 cases were dismissed. Paddington Tribunal has had 764 cases referred to it since it was established on 8th July, 1946. Other busy tribunals are Hammersmith (451 cases), St. Pancras (290), Westminster (289), Manchester (165), Brighton (131), Birmingham (151), Wimbledon (136), Islington (161), and Kingston-on-Thames (129). The success of these tribunals is apparent from the figures, and its effects in depressing rentals of furnished premises, which previously had risen to outrageously high levels, extend far beyond the cases actually brought before them.

### Law and Freedom

FREEDOM is relative and comparative. It relates to specific things, such as freedom from want and fear, and we can never appreciate the extent to which we enjoy it except by comparing our state with that of others. We have complained during the war and since its end of a great many irksome restrictions on our liberty, but we cannot fail to have been conscious of the fact that, compared with those whose countries were occupied by the enemy, we have been living in an enviable state of freedom. This fact has been brought home to us in various ways, both by our allies and our kinsmen. What the experience of subjugation meant to a lawyer, with his precise knowledge of the constituents of freedom, was admirably put by The Hon. Mr. Justice WORLEY, in a farewell speech in the Supreme Court of Singapore, on leaving to take up his appointment as Chief Justice of British Guiana. After tributes had been paid to him by the Bench, the Bar and the court officials, Mr. Justice Worley, in the course of his reply, published in the *Malayan Law Journal* for November, 1946, said: "After the surrender, when we fell into the power of our captors we realised that not only had our social and political system collapsed but also that the legal system upon which we had depended had disappeared and been replaced by the arbitrary whim of the invader. I think those of us who were interned, and all who were in this country then, began to realise for the first time the value of some features of our legal system which we had perhaps always taken for granted; the right of a man who was under arrest to be produced before a magistrate and told what was the charge against him, or to apply for habeas corpus so that his friends or legal advisers can ascertain that he is held lawfully on proper authority; the right of a man before he is convicted to have the case stated against him and proved in open court; the right of a man to be defended by his professional advisers. When we missed those things, and perhaps only then, did we realise how well and truly our forerunners who built up the English legal system had built and how deeply they had understood the springs of human conduct. I can speak of this from personal experience, because I myself was held for five months on no charge and finally released without any charge being preferred against me, and I can still remember the feeling of utter frustration, of the impossibility of any step which could bring one release or even a chance of a trial."

### Recent Decisions

In *Eyre and Another* v. *Rea*, on 4th February, 1947 (*The Times*, 5th February), ATKINSON, J., held that, where a defendant committed a breach of covenant that a house would be used as a private dwelling-house in single occupation only, the lessee could not have relief under s. 146 of the Law of Property Act, 1925, on the basis of continuing the breach; there must be a declaration of the forfeiture of the lease, and the plaintiff was entitled to damages based on the cost of restoring the house to single occupation without taking into account any possibility of the house having more value through having been converted into flats.

In *Luddett and Others* v. *Ginger Coote Airway, Ltd.*, the Judicial Committee of the Privy Council (LORD MACMILLAN, LORD WRIGHT, LORD PORTER, LORD SIMONDS and LORD UTHWATT), on 5th February (*The Times*, 6th February), held that an express condition contained in a ticket for carriage of passengers by air which exonerated the respondents from all liability for injury to passengers caused, *inter alia*, by the negligence of their servants, was valid and enforceable. The Board stated that there was no reason to hold that statutory restrictions of the Transport Act of Canada, 1938, and the Orders under the Act had been contravened, and the contract could not be pronounced unreasonable, invalid or illegal.

In *Fasey* v. *Enson*, on 7th February, HILBERY, J., held that where the defendant, who had had permisson to build an air raid shelter on the plaintiff's land, promised to clear the land so far as was reasonably possible, he broke his contract if he failed to apply for a licence to do the work, under reg. 56A and the Control of Building Order, no matter how difficult it might appear to obtain such licence, and was liable to the plaintiff in damages, such damages being measured by the cost of removal of the shelter.

# THE NECESSITY OF WRITTEN ASSENTS: A REPLY

(CONTRIBUTED)

A RECENT contributed article (p. 635 of vol. 90) in THE SOLICITORS' JOURNAL dealt with the question of the need for a written assent by a personal representative, in cases where he is the same person as the devisee; in particular, in the common case where the executors are also trustees and property is devised to them on trust for sale. The article quoted a passage from the "Encyclopædia of Forms and Precedents," 3rd ed., vol. 6, p. 557; it was pointed out that s. 36 (4) of the Administration of Estates Act uses the phrase "effectual to pass a legal estate"; and, since in such a case no legal estate can be said to "pass," the conclusion was drawn that in this particular case an assent may be implied from conduct, as under the old law, so that to execute a written assent is merely a matter of prudence, not of strict necessity.

Put in this way, the point appears of academic importance only; a written assent is, it seems, something of a luxury, advisable but not necessary. The practical question, however, which is of frequent occurrence in conveyancing practice, is not whether it should be done in the future, but what is the effect where it has not been done in the past. Thus: A dies, leaving B, his widow, solely entitled (under his will or intestacy) to a freehold dwelling-house, in which he lived. B takes out a grant of representation. She continues to occupy the house for ten or fifteen years, but executes no assent. B then dies intestate, and administration is granted to her children, C and D. The question now arises, whether C and D can make title. Can they do so, as B's representatives? Or must they first go to the expense of taking out a grant *de bonis non* to A's estate?

Similar questions arise where executor-trustees execute no assent, and then the survivor of them dies intestate. Can his administrators appoint new trustees, or can they not? If they have purported to do so, is the appointment valid or void?

The article referred to does not deal with this question, but it would seem to follow from the arguments therein advanced that an assent can be implied from conduct, so that, in the case given, an assent on B's part can be implied, and C and D can now make title without more formality. It is submitted that this view is mistaken, and it is desired to draw attention to the weight of authority against it.

Before 1926, as is well known, there was always a difficulty in connection with a sale under a will. Under the Land Transfer Act, the property vested, not in the devisee, but in the executor. An assent was therefore necessary, whether the devisee was or was not the same person. It could, however, (with one exception) be implied from conduct; so that the evidence of it depended on matters of fact which were not apparent from the documents of title. In the case of an executor-trustee, it depended on whether or not his acts were referable to his character as executor; and as this was not easy to determine, much inconvenience resulted, and it was often doubtful whether he should sell as personal representative or as trustee, and what inquiries the purchaser ought to make as to the progress of administration. (See "Emmet," 8th ed., p. 279, and cases there cited.) It is certain that the draftsman of the 1925 Acts intended to remove this inconvenience by requiring assents to be in writing.

He provided for it, not only by s. 36 of the Administration of Estates Act, but also by s. 72 (3) of the Law of Property Act, which provides that a person may convey land to, or *vest land in*, himself. The words in italics are applicable only

to assents and must have been drafted with s. 36 of the Administration of Estates Act in mind. Accordingly it is not surprising to find that he also provided a form specifically for this purpose; the form of assent by personal representatives in favour of trustees for sale (No. 9 of the Forms of Instruments, L.P.A. 1925, Sched. V) reads as follows: "To Hold unto [ourselves *or*] the said TA and TB," etc.

It was thus evidently the intention of the Legislature that all assents should be in writing, whether or not the assentor and the assentee were in fact the same person. If writing is in fact not necessary, it must be because the Acts expressed this intention so imperfectly that they have failed to carry it into effect.

It is submitted that there is no ground for this conclusion. The words of s. 36 (4) are not permissive, but mandatory: "an assent to the vesting of a legal estate *shall* be in writing"; and as property can be vested by a person in himself, this subsection applies equally, whether or not the assentor and the assentee are one and the same person. The words "effectual to pass a legal estate," which are relied on to support the contrary view, occur at the end of the subsection and are merely explanatory of the effect, in one particular case, of failing to comply with it; they cannot be read in such a way as to contradict the rest of the subsection without making nonsense of the whole.

It would be strange indeed if the courts felt themselves able to override the explicit wording of the Act; and in fact they have shown no disposition to do so. The case of *In re Hodge* [1940] Ch. 260, which is relied on for the contrary view, turned on quite a different point—the question of disclaimer—and in fact neither the decision nor the *obiter dicta* lend any support to it. In the case of *In re Pitt* (1928), 44 T.L.R. 371, the testatrix had died in 1917, long before the Acts; the case was evidently decided on the assumption (no doubt correct) that an assent must have been implied under the old law. This leaves only *Harris* v. *Harris*, which is a county court case, and therefore not a very good authority for a sweeping change of practice; this case, too, turned on the rights of beneficiaries, not of purchasers, and so is not in point.

On the other side, there are the dicta in *In re Yerburgh* [1928] W.N. 208, in which Romer, J., did little more than paraphrase s. 36.

Finally, against the authority of the learned editor of the "Encyclopædia," we have that of Sir Benjamin Cherry, one of the chief draftsmen of the 1925 Acts. The note to s. 36 (4) in "Wolstenholme and Cherry's Conveyancing Statutes," 11th ed., is as follows: "Even if the persons entitled are the representatives themselves, the assent must be in writing."

To sum up: the Act explicitly requires all assents to be in writing, and the courts have given no hint that it means anything but what it appears to mean. There is no ground whatever for thinking that they will do so, still less for assuming it in advance.

# CRIMINAL LAW AND PRACTICE

## THE RIGHT OF SEARCH

THE right of freedom from invasion of one's home, more popularly expressed in the maxim that the Englishman's home is his castle, has always been jealously and zealously protected by the courts from the days of the *Six Carpenters' Case* (1610), 8 Co. Rep. 146*a*, and *Entick* v. *Carrington* (1765), 19 St. Tri. 1029 (no right of search exists at common law) and until the present day decision in *Elias* v. *Pasmore* [1934] 2 K.B. 164.

Of course, there are limitations on this, as there are on all freedoms. There is, for example, the search warrant which a justice may grant under s. 42 (1) of the Larceny Act, 1916, and the written authority which a chief officer of police may give under s. 42 (2) to any constable to enter any house, shop, warehouse, yard or other premises and search for and seize any property which he believes to have been stolen. But in the latter case, only a special class of premises is involved—premises occupied during the previous twelve months by a convicted receiver or a harbourer of thieves, or premises occupied by a person convicted of any offence involving fraud or dishonesty punishable with penal servitude or imprisonment. Then there is the search warrant granted by a High Court judge under the Incitement to Disaffection Act, 1934, the justices' search warrant for gunpowder, etc., in any house, etc., where it is suspected that it is stored for an unlawful purpose, under s. 65 of the Offences against the Person Act, 1861, and search warrants under s. 26 of the Firearms Act, 1937, s. 16 of the Forgery Act, 1916, s. 73 of the Explosives Act, 1875 (under which a superintendent of police may issue a warrant in a case of emergency), s. 10 of the Criminal Law Amendment Act, 1885, and so on.

This list, which is far from complete, shows that the Englishman's right of privacy in his home is not absolute, but is considerable, and is protected by the existence of the magistrate, except in a few very serious emergencies.

On 22nd January at Old Street Police Court a street trader was acquitted of charges brought by the Ministry of Food of selling table jellies by retail without a licence and manufacturing table jellies without a licence. While the accused was in custody the police officer who had arrested him went to his house to confirm the address so that bail could be granted. He was accompanied by the food inspector, a colleague of the food inspector and another police officer.

The learned magistrate said that the right of search was a powerful weapon and its exercise was jealously guarded by the courts. Almost without exception the right was granted only on sworn information, each warrant being strictly limited to the premises named. The magistrate commented on the fact that the food inspector possessed a warrant issued by the Ministry of Food in the widest possible terms, and dated 7th August, 1946. It was described as issued pursuant to reg. 55AA, para. 2, of the Defence (General) Regulations, authorising the inspector, among other things, to enter and carry out an inspection of any food undertaking. By para. 6 of the regulation an "undertaking" means any public utility undertaking or any undertaking by way of trade or business. The learned magistrate expressed very grave doubts whether the house in question constituted an undertaking. The learned magistrate also commented on the fact that no chance was given to the accused to come along and see how the search was carried out. It appeared that the accused was then in custody, but his wife had invited the officers in.

It is important that these powers of search, if indeed they are necessary, should be conducted with the utmost discrimination. If, as in this case, "an obscure little one- or two-roomed flat where a man may have a couple of table jellies" is an undertaking, none of us may feel safe from arbitrary, and apparently legal, invasion of our private homes. This is not to say that a business may not be carried on in a house so as to constitute an undertaking, but only that the greatest care should be exercised. The learned magistrate at Old Street rightly considered himself a guardian of our liberties. The Windsor magistrates on 24th January entered a similar protest against this arbitrary right of search.

It is apparent that the Food Minister's answers to questions in the Commons on 29th January relative to this case were unsatisfactory in so far as he stated that the flat in question was an undertaking. That was a matter for the learned magistrate, who was not at all satisfied on this point. One salutary result of these cases, however, may well be expected to follow, and that is that food inspectors will in future use great care and discrimination in exercising these drastic and arbitrary powers, knowing that they will come under close and increasing scrutiny by the courts.

# COMPANY LAW AND PRACTICE

## PROPERTY OF A DISSOLVED COMPANY

A COMPANY formed under the Companies Acts may be dissolved either at the conclusion of winding-up proceedings or as the result of being struck off the register. In the case of a compulsory winding up, when the company's affairs are completely wound up, an order for dissolution is made by the court under s. 221 of the 1929 Act; in a voluntary winding-up the liquidator, as soon as the affairs of the company are fully wound up, calls the final meetings and lays his account before them and then makes his final return to the registrar: three months after the registration of the return the company is automatically dissolved (ss. 236, 245). Provisions for striking a company off the register are contained in s. 295: they apply where a company is not carrying on business or in operation, or where the company is in liquidation, but there is no liquidator, or no returns have been made by the liquidator for six months: in such cases the registrar, after making the prescribed inquiries and publishing the required notice in the *Gazette*, strikes the company's name off the register: notice of this is published in the *Gazette* and on publication the company is dissolved.

Sometimes, and not so uncommonly as one would imagine, it is discovered after dissolution that there was property vested in the company which has not been transferred or disposed of; for example, the company may have owned leasehold property which it had sublet for a few days less than the term, at the same rent as that payable under the head lease, and the sublessee may be paying the head landlord direct, or the company may have contracted to sell land and received the purchase money but by inadvertence the conveyance has not been executed; or the company may be the registered holder of shares in another company as nominee of the real owner of the shares. In such and similar cases, there being no asset of any value or interest to the company, the existence of its title to the property may well be overlooked and the company dissolved while the property is still vested in it. But the case is not confined to property in which the company has no beneficial interest or a beneficial interest of no value, and especially where the company has been dissolved as a result of its name being struck off the register may there be assets of value which belonged to the company. What can be done about property vested in a company at its dissolution, either by creditors or shareholders where the company was beneficially entitled, or by the beneficial owner where the company was a trustee?

To deal first with the case of property of which the company was the beneficial owner at the time of its dissolution. The effect of s. 296 of the 1929 Act is that all such property goes to the Crown as *bona vacantia*. The section expressly includes leaseholds, so that the decision in *Hastings Corporation* v. *Letton* [1908] 1 K.B. 378, that a lease to a corporation determines if the corporation is dissolved and the land reverts to the lessor, no longer holds good in the case of a company incorporated under the Companies Acts which is dissolved after 1929. Shareholders or creditors of the defunct company will, if the property is of value, usually want to take steps to have it made available for them: they may be able to come to some arrangement with the Crown (and, as I mentioned last week, the new Companies Bill gives the Crown a right to disclaim property coming to it as *bona vacantia* under s. 296), but otherwise their mode of procedure depends to some extent on the circumstances in which the company was dissolved. Under s. 294, the court may at any time within two years after the date of the dissolution, on the application of the liquidator or of any other person who appears to the court to be interested, make an order declaring the dissolution void. If the company has been struck off the register under s. 295, there is a provision (s. 295 (6)) that if the company or any member or creditor feels aggrieved by the company having been struck off the register, an application may be made to the court within twenty years from the publication in the *Gazette* of the striking-off notice, and the court, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just for the company to be restored to the register, may order its name to be restored: and the result is that the company is deemed to have continued in existence as if its name had not been struck off.

It will be observed that the time limit for instituting proceedings (*Re Scad, Ltd.* [1941] Ch. 386) under s. 294 to have a dissolution which follows on a winding up declared void is two years, whilst, where the company has been struck off, a period of twenty years is allowed for an application to restore a company's name to the register. If in either case the court makes the order, the result seems to be that outstanding property which has gone to the Crown as *bona vacantia* reverts to the company and so becomes available for creditors or, if there are no creditors, for shareholders. This is not in terms enacted, but it is necessarily implied by s. 296 which, in providing that the property of a dissolved company shall go to the Crown as *bona vacantia*, makes this subject to any order made by the court under s. 294 (declaring the dissolution void) or s. 295 (restoring the name of a company to the register): and notice of an application under either section must be given to the Treasury solicitor so that the Crown may, if it desires, be represented at the hearing and put forward any objections it may wish to make (see "Practice Notes" [1928] W.N. 218 and [1931] W.N. 199). In *Re C. W. Dixon, Ltd.* (*ante*, p. 85), Vaisey, J., in refusing to make an express vesting order, expressed the opinion that where an order under s. 294 was made, any property which was supposed to have vested in the Crown under s. 296 either in fact never did so vest or, in so far as it must be assumed to have so vested, the vesting was avoided by the order under s. 294.

So much for the case where the dissolved company was the beneficial owner of property which was still outstanding at the time of dissolution. Where such property was vested in the company as a trustee, it does not pass to the Crown as *bona vacantia*, there being expressly excepted from the operation of s. 296 property held by the company on trust for any other person. No difficulty of course arises where the company was not a sole trustee and there is a continuing trustee, or where, though the company was a sole trustee, there is some person with power to appoint new trustees: for in such cases new trustees can be appointed under s. 36 of the Trustee Act, 1925 (a dissolved company being, for the purposes of the section, a trustee incapable of acting—s. 36 (3)); and on such an appointment being made the property will vest in the new trustees by virtue of an express or implied vesting declaration (s. 40 of the Trustee Act, 1925). But the more usual case, it seems, of a company being dissolved while there is still property vested in it as a trustee, is the case where it has agreed to sell property and received the purchase price, but the necessary conveyance or transfer has been overlooked and the company dissolved. In such a case, the purchaser is the equitable owner of the property and the company is, *pro tanto*, a trustee for him; but there is no person with power to appoint a trustee in place of the dissolved company, so that s. 36 of the Trustee Act will not apply. Now in such a case no doubt an application could be made to the court under s. 294 or s. 295 of the Companies Act, whichever section applied in the circumstances, and the company resuscitated, followed by a transfer of the property to the purchaser. But a simpler method of proceeding is to apply to the court for a vesting order under the Trustee Act—s. 44, if the property is land, and s. 51 if the property consists of stock, shares or things in action. Both these sections expressly empower the court to make a vesting order where, *inter alia*, a trustee "being a corporation has been dissolved." Such orders were made in favour of purchasers from the company before dissolution under the old Trustee Acts, although the express provision I have just mentioned was

not contained in those Acts, the case being regarded as one of a trustee who "cannot be found," which was expressly provided for (*Re General Accident Assurance Corporation* [1904] 1 Ch. 147; *Re Richard Mills & Co.* [1905] W.N. 36). There was some doubt, however, whether it was properly a case of a trustee who could not be found, but the 1925 Act, as we have seen, excludes any doubt by the express provision for the case of a trustee which, being a corporation, has been dissolved. If it is not a case for a vesting order in favour of a purchaser, but, it may be, of a continuing trust, the court has also power under s. 41 of the Trustee Act to appoint new trustees in place of a corporation which has been dissolved, and under s. 44 and s. 51, to make a consequential vesting order in favour of the new trustees (cf. *Re No. 9, Bomore Road* [1906] 1 Ch. 359).

Generally speaking, therefore, where the legal title to property is in a company which is not the beneficial owner, and the company is dissolved, the position can be dealt with under the Trustee Act, either by the appointment of new trustees out of court or, if this is not practicable, by an application to the court for a vesting order with or without the appointment of new trustees; clearly no appointment by the court of a new trustee is required if there is a beneficial owner absolutely entitled in whom the property can be directly vested.

I should not leave the subject without mentioning s. 181 of the Law of Property Act, 1925, which provides that "where, by reason of the dissolution of a corporation . . ., a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate." I am not sure what operation this provision has in regard to a company to which the Companies Act applies; where such a company is dissolved, its property (other than property which it holds on trust) goes, as we have seen, to the Crown as *bona vacantia*, and there is no determining of a legal estate in that case; as for property vested in the company as sole trustee, while I am not prepared to conjecture as to the whereabouts of the legal estate when the company is dissolved, there seems no reason to suppose that it must always determine on the company's dissolution and require to be re-created. Certainly in the cases I have mentioned above vesting orders were made in regard to land without any necessity being found to create anew the estate which had been vested in the dissolved company. On the other hand there is the authority of *Hastings Corporation* v. *Letton* (*supra*), that a lease to a corporation determines on its dissolution and the land reverts to the lessor, which though it no longer holds good in the case of a lease vested beneficially in the company (which goes to the Crown as *bona vacantia*), presumably still applies if the lease is vested in the company as trustee, in which case a vesting order under the Trustee Act would not be appropriate as the lease would have disappeared and there would be nothing to vest. In such circumstances it may be necessary to obtain an order under s. 181 of the Law of Property Act, 1925, re-creating the leasehold interest before vesting it in a new trustee: but see *Re Albert Road, Norwood* [1916] 1 Ch. 289, where the matter was dealt with on the footing that though the leasehold premises reverted to the lessor they vested in him as trustee, and did not merge in the reversion. For a case of an application under s. 181, see *Re Crichton* [1932] W.N. 208, though I am not clear why anything more than a vesting order under the Trustee Act was necessary in that case.

# A CONVEYANCER'S DIARY

## ATTESTATION OF DOCUMENTS

THERE has been some correspondence in *The Times* lately, started by Lord Caldecote, formerly the Lord Chief Justice, who inquired why his wife should not be allowed to witness his signature on documents. This inquiry appears to raise the much wider issue why so many documents nowadays are thought to require attestation. According to Blackstone, 2 Comm. 307, and the note of Mr. Christian thereon in the 19th edition, attestation is a requisite of deeds "rather for preserving the evidence, than for constituting the essence of the deed." In earlier days it appears that persons attended as witnesses without signing their names ("that being not always in their power"), but they only heard the deed read, and the clerk or scribe added their names in a sort of memorandum "*his testibus Johanne Moore, Jacobo Smith et aliis ad hanc rem convocatis.*" Old deeds and charters and in particular Magna Carta were witnessed in this fashion, and down to the time of Sir Edward Coke creations of nobility were still witnessed in the same manner. However, by about the time of Henry VIII, "learning being then revived and the faculty of writing more general," this practice was dropped, and since about then witnesses have usually subscribed their attestation either at the bottom or on the back of the deed. But the learned author says, in his definition, that attestation is "execution of the deed in the presence of witnesses." His definition does not say anything about the witnesses signing also, nor does he anywhere state that the practice of their doing so is more than the usual one.

Where Blackstone is not carried away by exuberance over the more outrageous peculiarities of English law in the eighteenth century, he gets to the root of the matter. The only purpose of having a signature witnessed is to preserve evidence, and it is no necessary part of the preservation of the evidence that the attesting witnesses should also sign. It is very desirable that a solemn document like a deed should be executed in the presence of others, and it may be convenient that they should put their signatures to it. In some cases, of course, and more particularly with wills, some statutory provision makes attestation, in the sense of subscription, necessary to the very validity of the instrument. But that is not so in the case of ordinary deeds, still less in all the other multifarious examples of instruments which to-day trouble our existence. It is, moreover, rather absurd that the present practice is to have only a single witness to a deed. The real object is to perpetuate testimony, and for that one witness is little better than none at all. A dozen would be the really desirable arrangement. In my own experience there has only once been a case in which the slightest importance attached to the attestation of a deed, and then it was found that the witness was a housemaid who had left the grantor's service many years earlier and who was not available. If attestation matters at all, one should have as witnesses people with whom one is likely to keep in more permanent touch.

But deeds are only part of the story. Agreements under hand are generally witnessed, and Government departments have in recent years got hold of the idea, and have carried it to absurdities. In former days members of the Bar and others frequently found themselves certifying applications to the Foreign Office for passports. There was a good deal of sense in this arrangement, as the list of persons qualified to give the certificate was a short one, and so maintained a reasonably high standard of responsibility, and moreover, the person concerned actually certified that the applicant was known to him and was a fit person to have a passport. He was not really a witness at all. But various neighbours of mine have come lately asking if I would witness their signatures to applications for supplementary clothing coupons. Since I feel a certain anxiety to be scrupulous in these matters, I have inquired into the transaction, and have been given assurances that it is in order; but when I came actually to sign the document it turned out that although the Board of Trade required the signature of a person of one of the classes named in a list, that person is nothing but a mere witness to the signature of the applicant. Recently I was asked to put a signature on to the Ministry of Food's form R.G.5A, which is an application for replacement of a ration book or other document lost, stolen or destroyed. The front of this paper calls for a variety of more or less relevant information as to the loss; the back states that it must be signed "in the

presence of a responsible person such as, Justice of the Peace, Minister of Religion, Barrister, Registered Medical Practitioner, Resident Officiating Church Army Officer, Captain of the Salvation Army, Teacher of an Elementary or Secondary School, the Clerk or any member of a local authority, a police officer, not below the rank of sergeant, Public Assistance Officer, branch secretary of the applicant's trade union, registered friendly or approved society, principal officer of a branch of the Soldiers', Sailors', and Airmen's Family Association, Warden of a Residential Settlement, Postmaster." The selected member of this curious assortment of persons is simply required as a witness to the signature. I was somewhat mystified as to the necessity for such a witness, but the following recent incident shows the purpose of it. X lost some sweet coupons, and on applying at the local food office was handed one of these papers and told to take it to the police to be signed. The official, in explanation, said that the Ministry must check these applications, and that a good many people were afraid of going to the police. The sequel shows how futile the precaution is. At the sergeant's hour of attendance at the police station, a substantial number of women had collected, each carrying a form of some kind. The sergeant, quite correctly, signed each without any inspection or inquiry. One unfair result of the multiplicity of occasions for witnessing is, I understand, that medical practitioners and ministers of religion are plagued with people wanting their signatures. Surely it is an unnecessary imposition on two harassed bodies of men ?

In short, the requirement of witnessing has grown into a fetish, and Lord Caldecote's letter may serve to call attention to some of the absurdities. As regards his specific question, the answer clearly is that at common law the husbands and wives of parties to litigation were incompetent to give evidence either for or against the parties with certain irrelevant exceptions in criminal law. Since the Evidence Amendment Acts, husbands and wives are both competent and compellable in all civil proceedings, except with reference to questions as to their adultery in divorce proceedings. In criminal proceedings the husbands and wives of persons charged are always competent, but generally only on the application of the person charged. See Cockle, "Cases and Statutes on Evidence," 4th ed., pp. 260–262. In other words, for all practical purposes, the objection to attestation by husbands and wives is itself a survival from days before the law of evidence was altered.

*HOWE* v. *DARTMOUTH* : THE RATE OF INTEREST

In *Re Parry* [1947] Ch. 23, Romer, J., had to consider various complicated questions on the application of the rule in *Howe* v. *Dartmouth*. With most of them I hope to deal on a future occasion. The last question, however, was as to the rate at which interest was to be calculated. The learned judge had the evidence of a very experienced stockbroker on this matter. The date as at which the calculations had to be done was September, 1936, and Romer, J., said that he did not feel it right to depart, in a case where the calculation was to be done as at that date, from the rule in *Re Beech* [1920] 2 Ch. 40, namely, that the rate is 4 per cent. He was, however, careful to explain that his decision referred to the date in question, and it is still open to those interested to argue, in a case where the relevant date is more recent, that the rate should be less, and, indeed, substantially less in the most recent cases, than 4 per cent.

# LANDLORD AND TENANT NOTEBOOK

## UNLAWFUL SUBLETTING OF CONTROLLED PREMISES

THIS "Notebook," when discussing the decision in *Norman* v. *Simpson* [1946] 1 K.B. 158 (C.A.), expressed certain misgivings at the result. Two more recent cases, *Maley* v. *Fearn* (1947), 91 SOL. J. 67 (C.A.) and *Watson* v. *Saunders-Roe, Ltd.* (1947), *The Times*, 17th January, tend to bear out the criticism offered.

In *Norman* v. *Simpson*, a landlord had accepted rent after notice of breach of covenant not to sublet, and when the mesne tenancy determined the subtenant was held to be protected by s. 15 (3) of the Increase of Rent, etc., Act, 1920, as coming within the scope of the expression "any subtenant to whom the premises or any part thereof have been lawfully sublet." Argument and judgments concerned themselves mainly with the question whether "have been lawfully sublet" meant so sublet at the time of the subletting or at the time of the expiration of the mesne tenancy. It was unanimously held that what mattered was the position when the mesne tenancy expired, but du Parcq, L.J., dissenting from Morton and Scott, L.JJ., considered that the acceptance of rent, if it had waived a right of forfeiture, had not had that effect on a right to damages, and consequently that at both dates the subletting was unlawful. On this point, the majority judgments said little ; it appears to have been thought that it would not matter that the right to damages had been preserved. This might be said to follow from the following passage : "It is not easy to see exactly what subtenants fall within the latter class [i.e. those to whom the premises have been unlawfully sublet] but we think that the most reasonable explanation of the subsection is that premises are in a state of being 'unlawfully sublet' within the subsection if the head lessor has a subsisting right of re-entry, and are in a state of being 'lawfully sublet' when the head lessor has no such right." As it appears to have been agreed—though this was far from clear when the "Notebook" dealt with the case—that the head tenancy agreement gave the lessor a right of forfeiture as well as a right to damages, the definition was not necessary for the purposes of the decision.

But in *Maley* v. *Fearn*, the question whether a subletting was in breach of covenant only or in breach of condition was a live one. At first instance, the county court judge had "found," on the strength of an entry in a rent-book actually brought into use some years after the commencement of the head tenancy, that there was a condition of the tenancy giving rise to a right of re-entry (I will discuss this finding later). There had in any case been no waiver, for the plaintiff's agent had refused rent as soon as he had learned of the subletting, and the appeal was based on the contention that if the term in the head lease merely gave rise to a right to damages *Norman* v. *Simpson* would not apply. Treating the county court's decision that the term was a condition as a finding of fact which they would not disturb, the court dismissed the appeal. But some interesting observations were made obiter.

One was, that in the light of the arguments addressed to it, the court came to the conclusion that the view taken of the provision in the *Norman* v. *Simpson* tenancy, namely, that it amounted to a condition, was incorrect ; though this did not matter, for the definition of unlawfully subletting suggested obiter in that case was also incorrect, being too narrow. The net result is that we now have authority for the proposition that premises are unlawfully sublet whether the subletting be in breach of covenant only or in breach of condition, though they must be in the state of being unlawfully sublet when the mesne tenancy determines if the subtenant is to be unprotected.

The facts of *Watson* v. *Saunders-Roe, Ltd.* were different, the action being brought against mesne tenants who had sublet in breach of (at all events) covenant. The plaintiff had continued to accept rent from the defendants after acquiring knowledge of this breach. But when the latter had given notice to quit and the notice had expired and the subtenant claimed protection, the plaintiff sued on the footing that they were holding over and claimed damages for rent or for use and occupation.

Now in *Reynolds* v. *Bannerman* [1922] 1 K.B. 719, an indignant landlord's attempt to obtain redress from his ex-tenant failed in the following circumstances. The defendant had sublet, apparently "lawfully," part of the house, had given the plaintiff notice of intention to quit, and the subtenant notice to quit; and had given up his part of the house; but the subtenant claimed protection and refused to go. The court distinguished this case from those in which the tenant could have but had not got rid of the subtenant; here, there was nothing more that the tenant could have done to get possession for the landlord, and the thing that prevented him from so doing was the statute.

In *Watson* v. *Saunders-Roe, Ltd.* the plaintiff sought to distinguish *Reynolds* v. *Bannerman* in turn, in that the subletting in his case was in breach of covenant, and *Norman* v. *Simpson* in that in his case the tenants had given the notice of intention to quit and the action was brought against them and not against the subtenant. The learned county court judge gave judgment in favour of the plaintiff on the ground that the defendants' inability to give possession was due to their having broken the covenant against subletting. The Court of Appeal held, however, that none of the suggested distinctions made any difference. In any event, as *Norman* v. *Simpson* showed, the premises were "lawfully sublet" when the mesne tenancy expired; consequently, the subtenant by virtue of the vital subsection was deemed to become tenant of the head landlord.

One feature of *Watson* v. *Saunders-Roe, Ltd.* which may evoke comment is that the plaintiff framed his action in exactly the same way as did the plaintiff in *Reynolds* v. *Bannerman*, namely, as a claim for rent or for use and occupation, and measuring the amount asked for by reference to the rent reserved by the expired head tenancy. It may be that the distinction I am about to suggest is another distinction without a difference; but in the course of *Reynolds* v. *Bannerman*, Acton, J., reminded us that in *Henderson* v. *Squire* (1869), L.R. 4 Q.B. 170 "damages, not rent, were recovered."

*Henderson* v. *Squire* is the leading case on the tenant's obligation to deliver the premises up unoccupied, and laid it down that the landlord is entitled to recover all the loss he has sustained by not being put in possession, and this was expressed as "a sum equivalent to the rent he has lost and to the expenses he has been put to in taking legal proceedings to oust the subtenant from a wrongful possession." But there is no reason why the "rent he has lost" should be measured in every case by reference to that paid by the ex-tenant (who might also have paid a premium), nor does a landlord necessarily want to re-let at all; hence in these cases the word "rent" might well be omitted from the claim. As to "use and occupation," I find it difficult to reconcile this claim with the allegations, occupation by consent being an essential ingredient in such an action.

What the county court did in *Watson* v. *Saunders-Roe, Ltd.*, however, appears to have been to award neither damages for use and occupation, nor rent, nor even mesne profits, but rather damages for breach of the covenant not to sublet. Whether this breach had been so acquiesced in as to negative any right of action merely by accepting rent is a matter which does not seem to have been fully gone into in any of the recent cases; nor, in the last one, does the question whether the damage flowed from the breach appear to have been examined with thoroughness.

Reverting to the matter of covenants and conditions, the reports of *Norman* v. *Simpson* do not give the exact words used in the tenancy agreement, and when I first wrote about the case I said: "one gathers from the judgments . . . that the agreement contained a forfeiture clause which would operate . . ." The judgments in *Maley* v. *Fearn* have corrected this impression; but what seems rather astonishing is that in that case a rule inserted in a rent-book and reading "the tenant must not sublet or let apartments without the written consent of the owner or agent" should be considered to have the force of a condition. Courts have always been reluctant to construe ambiguous expressions as creating a right of re-entry, which is a right to defeat the estate granted. The words seem far closer to those of the clause discussed in *Shaw* v. *Coffin* (1863), 14 C.B. (N.S.) 372—"the said . . . [the tenant] agrees that he will not underlet the said premises without the consent in writing of the landlord"—which were held not to create a condition, than to the "it is stipulated and conditioned that [the tenant] shall not assign, transfer, or underlet . . . otherwise than to his wife, child or children" of *Doe d. Henniker* v. *Watt* (1828), 8 B. & C. 308, which were held to entitle the landlord to forfeit on breach of the undertaking.

# TO-DAY AND YESTERDAY

**February 10.**—With the breakdown of the regular appointment of Readers, who, after having read, joined the Benchers, it became the practice to summon several senior barristers at once to accept their call to the Bench. Some might accept, some defer acceptance and some not accept it. On 10th February, 1677, twelve barristers of Gray's Inn were summoned to appear "to be called to the Bench in order to read in their turn" but the condition was almost purely formal.

**February 11.**—Constantine Phipps was admitted to Gray's Inn on 11th February, 1678. He was called to the Bar in 1684. He was by sympathy a Jacobite and consequently, though his professional progress was rapid, promotion was slow. He was engaged in many notable cases, particularly those of the Bishop of St. David's and Dr. Sacheverel. His management of the defence of the latter marked him out for preferment when the Tories came to power. In December, 1710, he was knighted and appointed Lord Chancellor of Ireland. He incurred the animosity of the Whigs by openly exerting his influence to extend the power of the Tories. His life in Dublin was politically stormy and his attempt to discourage the customary dressing of the statue of William III, on 4th November, rendered him very unpopular with an influential section of the citizens. His energetic efforts to secure a Tory majority at the general election in 1713 failed and his triumphant enemies, denouncing him as the chief cause of the disorders in the realm and as a secret promoter of the Pretender's interests, agitated for his dismissal. Queen Anne's death and the dissolution of Parliament solved the problem of his future and he returned to the English bar. He died in 1723.

**February 12.**—On 12th February, 1678, the Gray's Inn Benchers ordered "Mr. Thomas to have a vote in Pension and be discharged of reading if he pay forthwith £150." The idea of the readings was not yet completely defunct for subsequently he undertook to read in Lent the following year and then intimated that he could not do so. Whereupon he was fined £150 with the proviso that this might be remitted if he read the succeeding autumn.

**February 13.**—In 1806, on the death of Pitt, Lord Grenville and Fox formed the short-lived Ministry of All the Talents. Lord Chief Justice Ellenborough declined the Great Seal, which Erskine rashly accepted, but agreed to join the Cabinet. On 13th February he wrote to his brother: "I have had the honour of being placed in the Cabinet without any wish on my part and indeed against my wishes, but a sense both of public and private duty has obliged me to accept . . . I have no motive of ambition or interest inducing me to mix in politics, and I will not suffer myself to bear any part in them which can trench upon the immediate duties of my judicial situation . . . I shall incur much obloquy in the hopes of doing some good."

**February 14.**—In 1808 the future Lord Campbell, having just started his series of law reports, sent a copy of the first number to the Lord Chief Justice, who, on 14th February, replied: "Lord Ellenborough presents his compliments to Mr. Campbell and returns him many thanks for his obliging communication of the first number of his *Nisi Prius* cases and for the very polite letter by which it was accompanied."

**February 15.**—On 15th February, 1835, thirty desperate characters nearly forced their way out of Edinburgh Gaol. Armed with gardening implements and stabling utensils they charged the main door where the turnkey only just had time to lock an inner gate before slipping out for help. Meanwhile, the governor appealed to the loyalty of the debtors who responded

and, armed with pokers, tongs and shovels, attacked the revolted felons and put most of them to flight back to their cells, while the rest were overpowered.

**February 16.**—Danby Palmer Fry, a Lincoln's Inn barrister, who died at 166 Haverstock Hill, on 16th February, 1903, obtained some reputation as an author of legal handbooks. He was also legal adviser to the local government board.

DRAMATIC CONFESSION

A dramatic situation has arisen over the man condemned to death for a murder at Manchester who protested: "I am innocent: there is someone who knows I am innocent," and the subsequent report of a confession by a man serving a sentence for theft in Walton Gaol. It recalls occasions when innocent men have found themselves sentenced for murders which they did not commit. There was the celebrated case of William Habron, convicted at Manchester of the murder of a policeman which was actually the work of the notorious Charlie Peace. Two years later, when Peace himself was in Leeds Prison under sentence of death for another killing, he confessed to this one too. He gave a clergyman the details and added: "I saw in the papers that certain men had been taken into custody for the murder of this policeman. That interested me. I thought I should like to attend the trial and I determined to be present. I left Hull for Manchester, not telling my family where I had gone. I attended the Manchester Assizes for two days and heard [Habron] sentenced to death. The sentence was afterwards reduced to penal servitude for life. Now, sir, some people will say I was a hardened wretch for allowing an innocent man to suffer for my crime. But what man would have done otherwise in my position? Could I have done otherwise, knowing, as I did, that I should certainly be hanged for the crime? But now that I am going to forfeit my own life and feel that I have nothing to gain by further secrecy, I think it right, in the sight of God and man, to clear this young man who is innocent of the crime." The accuracy of the details he was able to furnish convinced the Home Office and Habron was solaced with a free pardon and £800 compensation. It is interesting to recall that Peace committed the murder which finally brought him to the gallows just the very day after he heard Habron condemned to death. That sentence was pronounced on 28th November, 1876.

THE INNOCENT HANGED

An earlier case, when the true perpetrators of a murder stood by and let an innocent man suffer for their crime, was the case of Richard Colman, hanged on Kennington Common, on 12th April, 1749, for the murder of Sarah Green. The girl was returning home late from a party along Kennington Lane when three men assaulted her and handled her so brutally that she afterwards died in St. Thomas's Hospital. She gave a description of one of her assailants which seemed to fit Colman and when he was taken to the hospital she said she believed he was one of them, though she would not positively swear it. On a second visit she actually swore that he was not one of them. The day afterwards she died. Despite what she had said a warrant was issued for the arrest of Colman, who took fright and went into hiding at Pinner. Rewards were offered for his apprehension and in due course he was arrested and tried at the Surrey Assizes. Although he was able to produce strong evidence to prove an alibi, the jury chose to disbelieve it and no wonder, for three of the witnesses were actually the men who committed the crime and, accordingly, they could not truthfully say where the accused was at the time; this must have given something of a flavour of artificiality to their testimony. Colman was duly convicted and it was two years before the truth came out. Then two of the real murderers were hanged, the third turning King's evidence.

# COUNTY COURT LETTER

### The Quality of Canteen Tea

IN *Pearson* v. *Standard Motors, Ltd.*, at Coventry County Court, the claim was for £200 as damages for negligence and breach of duty. The plaintiff was formerly employed at the defendants' works, and his case was that in September, 1945, he drank a cup of tea from an urn in the factory canteen. As a result, he contracted an illness which caused loss of wages and pain and suffering. The defendants denied liability, and their medical evidence was that the history of the plaintiff's illness indicated that he had suffered from a form of gastro-enteritis. Although the urn was a possible source of infection, the plaintiff seemed to have an influenzal infection. The musty smell in the tea was probably purely co-incidental with the plaintiff's illness. His Honour Judge Forbes observed that the case was a warning against jumping to conclusions. Although the tea was "tasteful," all the urns were the same that morning, and 400 cups of tea tasted alike. The plaintiff undoubtedly felt queer, but he was an intelligent artisan and knew his employment would shortly terminate owing to redundancy. He therefore decided to make the most of the attack, but was not so ill as he wished the court to believe. Judgment was given for the defendants, with costs.

### The Value of Clothing Coupons

IN *Rodway* v. *Goswell*, at Birmingham County Court, the claim was for the return of twenty-six clothing coupons or £50, their value. The plaintiff's case was that in February, 1945, he ordered a suit of clothes from the defendant, a tailor. At the first measurement the defendant cut twenty-six coupons from the plaintiff's book, and made an appointment for fitting. This appointment was not kept, and subsequent applications for the coupons had been fruitless. It was hoped that the Board of Trade would replace them. The defendant did not appear. His Honour Judge Tucker gave judgment for the plaintiff for £26 and costs.

### Repairs to Car

IN *Hudd and Another* v. *Wells*, at Bournemouth County Court, the claim was for £25 12s. 6d. for work done to a motor car. The counter-claim was for £27 17s. 9d. for damages for breach of contract. The plaintiffs were garage proprietors, and their case was that an 8 h.p. Morris car, ten years old, was brought to them by the defendant in February, 1945, for repair. The oil pressure was low, and the plaintiffs completely overhauled the engine. It was impossible, however, to get a new pump or the required spares, and the defendant took the car away on the 4th February, as he required it in his business of a market gardener. The plaintiffs did not state that the car was then completely serviceable, as alleged by the defendant. The defence was that the plaintiffs failed correctly to diagnose the trouble. The oil pressure defect was not put right, and a new pump had to be fitted by another garage at a cost of £2 3s. 9d. The balance of the counter-claim was in respect of the loss of use of the car for a month. His Honour Judge Cave, K.C., gave judgment for the plaintiffs for £25 12s. 6d. on the claim and for the defendant for £2 3s. 9d. on the counter-claim, with costs.

### Ejectment of Billetee

IN *Friends' Relief Service* v. *Walls*, at Shipston-on-Stour County Court, the claim was for possession of a cottage, and £39 5s. 6d. arrears of rent. The plaintiffs' case was that in August, 1941, they took over and furnished the cottage, with the exception of two rooms, which were retained by the owner. The plaintiffs paid the owner a rent of 15s. a week and half the rates, which amounted to about 1s. 1½d. In February, 1943, the defendant went into occupation under the Government Billeting Scheme, and the billeting allowance was received. It was agreed that when the billeting allowance ceased, the defendant would pay rent at the rate of 16s. 6d. per week. This meant that the plaintiffs were charging 4½d. a week for use of furniture. The billeting allowance ceased on the 21st August, 1943, and the agreed rent was then paid until the 18th December, since when it had gradually fallen into arrears. Notice to quit was sent by registered post on the 5th March. The defendant did not appear, and was stated by his son to be in hospital. His Honour Judge Forbes made an order for possession in one month, and gave judgment for the amount claimed, payable at £1 per month.

### The Definition of a Separate Dwelling

IN *Dunham and Others* v. *Ashwin*, at Stratford-on-Avon County Court, the claim was for possession of a house. The plaintiff was the wife of a bank clerk, and her case was that she, her husband and their three children were sharing their house by agreement with the defendant. The latter was a lady, aged eighty-seven, and in good health. It was a greater hardship for the plaintiffs to be denied full possession, as it would be easier for the defendant to find alternative accommodation. She was not protected by the Rent Acts. The defendant's case was that her share of the house was a dwelling protected by the Rent Acts. His Honour Judge Forbes held that the agreement between the parties did not constitute the defendant's share of the house a separate dwelling. The Rent Acts did not apply, and an order was made for possession in three months.

# POINTS IN PRACTICE

*Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.*

**Partition of property**

*Q.* A and B are man and wife, and purchased freehold property in their joint names, i.e., as joint tenants both at law and in equity. The parties have now been divorced but the question of the realty was not brought up during the proceedings. One party now wishes that the property should be sold and the proceeds of sale divided equally between the parties. The other party, however, refuses to agree to such sale and is content merely to have things as they are. In circumstances such as the above can one party compel the other to join in the sale and, if the party whose joinder is necessary refuses, is there any means of compelling agreement by applying to the court ?

*A.* Joinder can be compelled by proceedings under the Law of Property Act, 1925, ss. 28 (3) and 30.

**Landlord and Tenant Act, 1927**

*Q.* Our client, a tenant, having failed to give twelve months' previous written notice to renew his lease in accordance with the Landlord and Tenant Act, 1927, is now holding over "under the lease as a statutory tenant"—the latter words were used by the landlord. The lease includes dwelling-house and shop premises. If and when the premises cease to be controlled by the Rent, etc., Acts, or if the shop premises separately cease to be controlled, what notice to quit will be required ? If proper notice to quit is given may the tenant then give written notice claiming renewal of lease or compensation in lieu ?

*A.* No notice to quit will be required. See *Shuter* v. *Hersh* [1922] 1 K.B. 438. The tenant cannot claim renewal or compensation. The case is not within the Increase of Rent, etc., Act, 1938, Sched. I, para. 4.

**Will—**Devise to grant a Lease for Life and then over—Death Duties

*Q.* T, a testator possessed of considerable means, proposes by his will to leave his dwelling-house to his trustees upon trust to grant a lease to a stranger for the term of ninety years at the annual rent of £1, his trustees repairing and insuring the premises during the whole of the term. The lease is to be determinable by the trustees by one month's notice after the death of the stranger or by the stranger at any time by three months' notice. It is particularly desired that the trustees should have sufficient funds in hand to enable them to carry out their repairing and insuring liabilities, and also to meet any claims for duty which may arise without resort to the residue, which is to be immediately divisible. How are death duties likely to be levied on the devise of the house ? Would a legacy to the trustees to meet the probable duties on the house, the costs of repairs, and insurance, be a satisfactory method of dealing with this matter ?

*A.* We take it that the ninety-years lease is to be granted in view of the Law of Property Act, 1925, s. 149, and that the real object is to give the stranger a lease for life. If that be so we think the claims will be :—

Estate duty on the death of the testator.
Succession duty on the same occasion on the life interest.
Estate duty on the cesser of the life interest.
Succession duty on the same cesser.

We suggest that the will should direct the payment of all these duties (and in the cases of liability in future by way of commutation) out of residue. As to the repairs and insurance, we can suggest no better method than a legacy to the trustees for the purpose, with a gift over of any unexpended balance (of capital and income). The legacy should be considerable, as major repairs may be called for.

# OBITUARY

SIR ALFRED DENNIS

Sir Alfred Hull Dennis, K.B.E., C.B., Chief Assistant Solicitor to the Treasury from 1909 to 1924, died on Monday, 3rd February, aged eighty-eight. He was called by the Inner Temple in 1885.

SIR ELLIS HUME-WILLIAMS, K.C.

The Right Hon. Sir Ellis Hume-Williams, Bt., K.B.E., K.C. died on Tuesday, 4th February, aged eighty-three. He was called by the Middle Temple in 1881 and took silk in 1899. He retired from active practice at the Bar in 1930, and had since taken divorce cases as Commissioner of Assize.

# CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal]

**Compulsory Membership of The Law Society**

Sir,—Mr. Sanders does good service by his letter in your recent number (91 Sol. J. 66). Perhaps a few observations from one who has just paid his thirty-ninth annual subscription to the Society may be of a little interest.

I entirely agree with Mr. Sanders that most of the present—all voluntary—members dislike the idea of compulsion. Certainly I do. I feel that where a firm consists of, say, four partners, it is too much to expect *each* of them to pay £5 annual subscription, especially if the partners do not make use of the Society's premises ; under such circumstances £20 is too much to look for.

After all, every practising solicitor has to pay annually £1 for his annual certificate (it used to be 5s. only) to the Society (applied to the legal education of persons who will become his competitors). Four partners therefore already pay £4 a year, whether they are town or country. Could a small increase in *this* fee be considered, rather than an increase in the membership subscription, and rather than compulsory membership ?

The Society's premises are already over-crowded during the middle of the day.

I do not much like the suggestion for adding letters after a member's name. We all know of people with strings of letters, or even "doctorates," which are obtainable, in some instances from America, as consideration for a small payment ; F.L.S. or M.L.S. ought not to be attached as the reward of an annual subscription.

We do not all of us very much like the word "solicitor," but we might find ourselves worse off with "F.L.S." if the irreverent were to add two vowels before the "L."

As to using the hall for "indoor amusements," I think that some members would drop out if that came to pass.

As to a residential club for members and their families, I do not feel that this should become part of the Society's activities. But I do think, and only recently I put my views before the Society's secretary, that an effort should be made to provide sleeping accommodation and meals for practitioners who are obliged to come to town on business. That alone would give country members something very valuable for their money, and would increase country membership. The secretary's reply was that the Society has no available accommodation now, and cannot hope to acquire further premises in existing conditions.

All practitioners should constantly bear in mind the immense amount of work always being done for them by the Council and its staff, and should become members if they can reasonably afford it. But I am against nazification.

Wembley, Middlesex. H. Arnold Woolley.

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Sir,—In his excellent letter, with which I entirely agree, Mr. Sanders draws attention to an important distinction between the legal profession and other professions. In the majority of other professions a person's standing is indicated neatly by placing letters after the person's name. Now that more and more public appointments are being held by solicitors it is desirable that this system should be adopted for solicitors. The public are entitled to know the qualifications of the persons holding public offices, and there are obvious objections to putting "Solicitor" after a person's name.

For the general practitioner, too, it would be advantageous in that the public would know the standing in the profession of those with whom they deal.

There should be no difficulty in formulating a scheme whereby on admission a solicitor became entitled to membership and after a period of years to Fellowship on the recommendation of other Fellows. Initially, all over the specified number of years standing would be entitled to Fellowship if they wished—otherwise they would become members. Possibly an addition to the annual subscription would be required of Fellows, but this is a detail for consideration later.

Bramhope, Nr. Leeds. James W. Chant.

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A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 3rd February. Mr. R. J. Kent was in the chair. Mr. J. I. E. Arnold proposed : "That this House deplores the agitation for an increased birth rate in this country." Mr. E. D. Smith opposed. There also spoke : Messrs. O. T. Hill, F. R. McQuown, G. C. Raffety and G. E. Langrish. The motion was carried.

# BOOKS RECEIVED

**Common Sense in Law.** By Sir PAUL VINOGRADOFF. Second Edition, revised by H. G. HANBURY, D.C.L. 1946. pp. (with Index) 192. London: Geoffrey Cumberlege, Oxford University Press. 3s. 6d. net.

**A Digest of the Law of Evidence.** By Sir JAMES FITZJAMES STEPHEN. Twelfth Edition by Sir HARRY LUSHINGTON STEPHEN, of the Inner Temple, Barrister-at-Law, and LEWIS FREDERICK STURGE, of the Inner Temple, Barrister-at-Law. 1946. pp. lvi and (with Index) 273. London: Macmillan and Co., Ltd. 7s. 6d. net.

**The Trial of German Major War Criminals.** Part 3. 1946. pp. xi and 339. London: His Majesty's Stationery Office. 5s. 6d. net.

**Paterson's Licensing Acts.** Fifty-fifth Edition. Edited by F. MORTON SMITH, B.A., Solicitor. 1947. pp. cxviii, 1608 and (Index) 189. London: Butterworth & Co. (Publishers), Ltd. Thin edition, 37s. 6d. net. Medium edition, 34s. net.

**The Law Relating to Golf Clubs.** By WILLIAM DESMOND BLATCH, Solicitor. Second Edition. 1946. pp. (with Index) 81. London: Waterlow & Sons, Ltd. 10s. 6d. net.

**Patents of Invention.** Origin and Growth of the Patent System in Britain. By ALLAN GOMME, late Librarian of The Patent Office. 1947. pp. 48. London: Longmans, Green & Co. 1s. 6d. net.

**Duty and Art in Advocacy.** By The Hon. Sir MALCOLM HILBERY, a Justice of the King's Bench Division of the High Court of Justice. 1946. pp. 35. London: Stevens & Sons, Ltd. 6s. net.

**Justices of the Peace.** An Outline of the Origin, Powers and Duties of the Magisterial Bench. 1946. pp. 28. London: Justice of the Peace, Ltd. 2s. 6d. net.

**The Annual Charities Register and Digest.** Fifty-fourth Edition. 1947. pp. (with Index) 501. London: Longmans, Green & Co. 10s. 6d. net.

**Dilapidation Practice.** By C. A. MARTIN FRENCH. With a foreword by The Rt. Hon. THE LORD MESTON. 1947. pp. xxvii and (with Index) 722. London: The Estates Gazette. 52s. 6d. net.

**The New Law of Education.** By Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law, and P. S. TAYLOR, M.A., Chief Education Officer, County Borough of Reading. Second Edition. 1947. pp. xx, 552 and (Index) 55. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

**A Handbook on the Death Duties.** Supplement to the Fifth Edition by H. ARNOLD WOOLLEY, Solicitor of the Supreme Court. 1947. pp. 39. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

**World Affairs.** Vol. 1 (New Series), No. 1. January, 1947. 2s 6d. net.

# RECENT LEGISLATION

## STATUTORY RULES AND ORDERS, 1947

No. 141. **Trading with the Enemy.** Japan. General Licence. January 28.

## COMMAND PAPERS (SESSION 1946–47)

No. 7024. **Matrimonial Causes.** Committee on Procedure (Chairman: The Hon. Mr. Justice Denning). Final Report. January 21.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

## THE DAILY CAUSE LIST

It is stated in *The Times* of 11th February that the Lord Chief Justice said on 10th February that, owing to the electricity cut, it was impossible for the printers to publish the daily cause list; and no arrangement had yet been made for that to be done. The result was that the only announcement which could be made as to the cases to be heard would be the "flimsies" which were issued at from 2 to 2.30 p.m., and were posted at the doors of the courts. Solicitors, he was sure, would do their best, as they always did, to find out what cases appeared on the flimsies, since that, at present, seemed the only announcement which could be made. The court would be lenient where it was impossible for people to ascertain whether their cases were in the list.

# NOTES OF CASES

## COURT OF APPEAL

**Buchler *v.* Buchler**

Lord Greene, M.R., Asquith, L.J., and Vaisey, J.
24th January, 1947

*Divorce—Constructive desertion—Husband's preference for society of male friend.*

Appeal from a decision of Wallington, J. (90 SOL. J. 455), on a petition and cross-petition for desertion.

The husband based his case on the facts that his wife had gone away and then written that she had decided not to return home. Her case, which was that the husband's conduct in effect drove her away from the matrimonial home and that she was entitled to a decree on the footing that he had deserted her, was based on the husband's association with a man called Harris, who was in his service as a farm-hand. Wallington, J., found as facts that Harris was an honest man and a hard worker, and that it was the relationship formed and developed between the husband and Harris which caused the wife finally to leave the home in October, 1942. The husband's liking for Harris having increased, they spent a large part of their time together, the husband taking Harris away for a number of holidays by motor car and caravan, and arranging for him to sleep at the house on occasions when the wife was away. The husband spent many evenings with Harris at licensed houses, took him to Cornwall, Scotland and the Lake District, and invited him to the house for dinner parties, on a number of occasions going with Harris to the sitting-room and leaving his wife to entertain the guests. The association, though in fact in no way sexually improper, caused gossip in the neighbourhood. The wife repeatedly warned the husband that she would leave unless he dropped the association. Wallington, J., held that, as the husband had known that his wife would leave if he persisted in the association, and as a man must be presumed to intend the natural consequences of his acts, the husband had in effect driven the wife from home, and was guilty of constructive desertion. He therefore granted the wife a decree, and dismissed the husband's cross-petition for desertion. The husband appealed. (*Cur. adv. vult.*)

LORD GREENE, M.R., said that Wallington, J., had felt oppressed by the fact that there was no similar case in the books. Incompatibility of temperament, or unhappiness in the marital relationship which was not caused by cruelty, not being by themselves ground for divorce, did not by themselves entitle the spouse affected to leave the matrimonial home and then to claim that the other spouse, even if he or she was alone to blame for the ill-success of the marriage, had been guilty of the grave matrimonial offence of constructive desertion. In constructive desertion the spouse charged must be shown to have been guilty of conduct equivalent to driving the other spouse away (*factum*), and to have done so with the intention of bringing the matrimonial consortium to an end (*animus*). In the case of constructive desertion, where there was no such significant act by the spouse alleged to be in desertion as departure from the matrimonial home, the acts alleged to be equivalent to an expulsion of the complaining spouse must be of such gravity and so clearly established that they could be fairly so described. It would be unfortunate if, under the guise of constructive desertion, a new ground for divorce were to be introduced into our law. Conduct short of an actual matrimonial offence was sufficient to constitute constructive desertion. It must, however, be of a very grave character. There was no suggestion here of cruelty amounting to a matrimonial offence. The wife's case was entirely based on the association which her husband conducted, in disregard of her feelings, with one of his farm hands—one Harris—whom he employed as a pig-man when they were living at Charlwood, Surrey. The association between the two men was a close and remarkable one, although, as Wallington, J., had expressly found, and as the Court of Appeal agreed, there was nothing of an improper or homosexual nature about it. The wife's view was that the husband should have paid attention to the gossip aroused by his association with Harris, which was, no doubt, a very unusual one in view of the difference in class and education between the two men. He (his lordship) accepted that the husband deliberately refused to give up his association with Harris, well knowing that it distressed his wife, and that he acted without consideration for her feelings, and rude and inconsiderate, and flaunted the friendship. He appreciated the blameworthy character of the husband's behaviour, but the question was whether the line had been crossed which divided blameworthy conduct, causing the wife distress and unhappiness,

from conduct amounting to expulsion of the wife from the home. His lordship considered the evidence on that point, and said that, in his opinion, Wallington, J., had given too much importance to the husband's occasional remarks to the wife that, if she did not like his association with Mr. Harris, she could go, for she had set out deliberately to break up the association. A man of great moral refinement might have done what his wife asked him, but the husband's failure to do so here was not cruelty. The crux of the case was whether his conduct was sufficient to cause the wife to leave the home. In his (his lordship's) opinion, it was not. That being the case, the wife could not give the husband's conduct the character of constructive desertion by announcing her intention of leaving the home if he did not cease from it. The case was not affected by the doctrine that a man must be presumed to intend the natural consequence of his acts. The husband was accordingly not guilty of desertion, and his appeal would be allowed. As it had been conceded for the wife that, if she were held not to have been justified in leaving home, she must herself be guilty of desertion, it followed that the husband was entitled to a decree.

ASQUITH, L.J., and VAISEY, J., read concurring judgments.

COUNSEL: *Sir Valentine Holmes*, K.C. and *Harold Brown*; *Beyfus*, K.C., and *Leslie Brooks*.

SOLICITORS: *Mawby, Barrie & Co.*; *Ingledew, Brown, Bennison and Garrett*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## CHANCERY DIVISION

*In re* **Dominion Students' Hall Trust; Dominion Students' Hall Trust** *v.* **Attorney-General**

Evershed, J. 25th November, 1946

*Charity—Hostel for students of European origin—Application to authorise admission of coloured students—"Impossibility" of performing original trust.*

Adjourned summons and petition.

This summons and petition was presented by a charity known as Dominion Students' Hall Trust, a company limited by guarantee. Its memorandum of association stated that one of its objects was to provide a hostel for male students of the overseas Dominions of the British Empire "of European origin." An extraordinary general meeting of the company was held on the 19th June, 1945, at which a special resolution was passed that the provisions of the memorandum of association be altered by deleting the words "of European origin." By this summons the company asked that a scheme might be sanctioned by which the charity might be administered for the benefit of all students regardless of their racial origin. By the petition the company asked for the confirmation of the special resolution altering its memorandum. The Attorney-General did not oppose the application.

EVERSHED, J., said that the purpose of both the petition and summons was that a restriction which had hitherto been characteristic of the charity, limiting its objects so as to exclude coloured students of the British Empire, should be removed, and that the benefits of the charity should be open to all citizens from the Empire without what was commonly known as "the colour bar." It was plain that he had to bear in mind the general proposition laid down in *In re Weir Hospital* [1910] 2 Ch. 124, which was that funds given by a testator for a particular charitable purpose could not be applied *cyprès* by the court unless it had been shown to be impossible to carry out the testator's intention. The present case was not that of a testator, and the court was perhaps not so strictly limited. It was true that the word "impossible" should be given a wide significance (*In re Campden Charities* (1881), 18 Ch. D. 310; *In re Robinson* [1930] 2 Ch. 332). It was not necessary to say that the original scheme was absolutely impracticable. He had to consider the primary intention of the charity. Times had changed since the charity was established and to retain the condition, far from fostering the charity's main object, might defeat it. The case, therefore, fell within the broad description of impossibility. He would make the order.

COUNSEL: *J. H. Stamp*; *Gordon Brown*; *Danckwerts*.

SOLICITORS: *Freshfields, Leese & Munns*; *Treasury Solicitor*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

**Sales Affiliates, Ltd.** *v.* **Le Jean, Ltd.**

Evershed, J. 28th January, 1947

*Misrepresentation—Hair-waving process known as "Jamal" hair waving—Process effected by use of plaintiff's chemicals—Defendant uses his own chemicals when supplying "Jamal" wave—Right of plaintiffs to relief.*

Witness action.

In this action, framed as an ordinary passing-off action, the plaintiff company sought an injunction to restrain the defendant company from passing off as "Jamal" hair waving processes of hair waving not of the plaintiff company's design or manufacture. The plaintiffs marketed a lotion and sachets for use by hair-dressers in giving a permanent wave known as the "Jamal" wave. The plaintiffs had spent upwards of £109,000 in advertising this system of hair-waving. The evidence showed that to the trade "Jamal Hair Waving" was understood to mean the system of hair-dressing produced by using the plaintiffs' lotion and sachets. The defendants were hair-dressers, and the plaintiffs established that on two occasions at least the defendants had given to women asking for a "Jamal" wave, a permanent wave produced by the use of chemicals which had not been supplied by the plaintiffs. As a consequence they brought this action.

EVERSHED, J., said that, assuming there was any right in the plaintiffs when a member of the public asked for a "Jamal" hair wave to have that wave performed exclusively with the materials of the plaintiffs' marketing, that right had been infringed. That gave rise to the question as to the nature of the plaintiffs' right in a subject-matter of this kind. The action was framed as a passing-off action. That formulation of the cause of action would not do. The plaintiffs were not designers or manufacturers of any process, nor could a person say, apart from patented processes, that he was the proprietor of a process. Certainly the plaintiffs were not the proprietors of a process. On the other hand, if a trader marketed goods for use in a certain process and the buyers of those goods, namely, other traders, were entitled, when asked for the named process, to use *any* materials a great injustice might be done to the trader marketing the product. Passing-off was a form of misrepresentation, not necessarily confined to the sale of goods. Here the subject-matter of the action was the rendering of a service, which involved no sale of any article to any member of the public, but the articles used were consumed in the process. He had come to the conclusion that a member of the public asking for a "Jamal" wave meant a wave performed by the plaintiffs' method. He was not, however, clear that in a case of this kind public notoriety came into it. The plaintiffs only dealt with the trader. It would be too wide to suggest that the plaintiffs had a goodwill in the name, so that any injury to the goodwill was a tortious act. Many ordinary acts of competition were designed to injure another man's goodwill, but they were not tortious. On the other hand, where a brand name was applied to a process, in circumstances in which it was understood by the trade that when that process was carried out it should be carried out only with the branded articles, if a trader knowingly carried out what was supposed to be that process with other articles than the branded articles, he was doing something which was wrongful and which would entitle the plaintiff to his remedy. This was a form of misrepresentation. The trader was misrepresenting the process he was giving as being that which was associated with the name and goodwill of the plaintiffs. He was inclined to think the matter might also be put on a contractual basis. He would declare that the defendants were not entitled to give to a customer asking for a "Jamal" hair wave a permanent wave purporting to be a "Jamal" hair wave unless the defendants used exclusively the products of the plaintiffs for such process. He awarded the plaintiffs 40s. damages.

COUNSEL: *Pascoe Hayward*, K.C., and *D. McIntyre*; *H. Lightman*.

SOLICITORS: *Griffinhoofe & Brewster*; *S. Myers & Son*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## KING'S BENCH DIVISION

**Fussell** *v.* **Somerset Justices' Licensing Committee**

Lord Goddard, C.J., Humphreys and Lewis, JJ.

10th December, 1946

*Licensing—Application for licence—Justices equally divided—Adjournment of application for hearing before larger bench—Validity.*

Case stated by a licensing committee of Somerset justices.

At the adjourned general annual licensing meeting of the Keynsham licensing justices held on the 1st March, 1946, the appellant applied for a new justices' licence to sell intoxicating liquors at certain premises. The application was opposed. Six justices sat at the hearing, and, both sides having been heard, the chairman announced the decision of the meeting by saying, "The bench being equally divided on this application, no order is made and the case will be reheard and the adjourned meeting is further adjourned until 22nd March, 1946 [for hearing] by a reconstituted bench." At the meeting on 22nd March eleven justices sat, including the six present on 1st March. It was objected that the matter had been decided at the earlier meeting,

but the justices proceeded to hear it *de novo*, and the application was granted by a majority. When the matter came before the licensing committee as confirming authority, the same objection was raised, and they held that the application for confirmation was not rightly before them, and refused to make any order on it. The applicant appealed.

LORD GODDARD, C.J., said that it was contended that what had happened when the bench was equally divided amounted to a decision, and that, therefore, the licence had been refused. The question was whether the justices had in fact given a decision or merely adjourned the case, for there must be an inherent right in every court to adjourn a hearing, for whatever reason. A good reason for justices to adjourn a hearing would be that they were an even number and desired to be an uneven number in order that there might be a majority decision. If at the hearing of an application for a licence the justices were equally divided and said that they therefore refused the application because there was no majority in favour of granting it, that amounted to an adjudication refusing the licence. Here, however, it was clear that the justices had meant that they were not going to give a decision on the matter but were going to adjourn it so that it might be heard by a larger bench and a decision arrived at. They had an inherent right to do that, and also a statutory right to adjourn the hearing. It was conceded that the justices were not to be regarded as *functus officio*, for they had simply adjourned the matter for hearing before a larger bench on another day. The case was properly before the confirming authority, and it must be remitted to them with a direction to adjudicate upon it.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Colin Duncan; Gattie.*

SOLICITORS: *Godden, Holme & Co.*, for *Daniel & Cruttwell*, Frome; *Sharpe, Pritchard & Co.*, for the *Clerk to Somerset County Council.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Read *v.* Donovan**

Lord Goddard, C.J., Humphreys and Lewis, JJ.

12th December, 1946

*Firearms—Signal pistol not designed as weapon—Acquisition without firearm certificate—Firearm—Signalling apparatus—Firearms Act*, 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 12), *ss.* 1 (2), 32 (1).

Case stated by a Metropolitan magistrate.

An information preferred by the appellant charged the respondent with acquiring, without holding a certificate as required by the Act of 1937, a double-barrelled signal pistol of German manufacture firing a cartridge with explosive and containing a phosphorous and magnesium flare. It was capable of killing at a distance of up to 20 feet, and might inflict a more serious wound than a heavy revolver. It was not designed as a weapon but had been used as such. The magistrate, holding that the expression "lethal weapon" in s. 32 (1) meant an implement designed to kill or wound as distinct from one which, being misused, was capable of killing or wounding, dismissed the charge. By s. 1 (2) of the Firearms Act, 1937, "If any person —(*a*) purchases, acquires or has in his possession any firearm . . . to which this Part of this Act applies without holding a firearm certificate in force" he is guilty of an offence. By s. 4 (6) a person needs no certificate in respect of "(*a*) . . . a signalling apparatus . . . on board an aircraft or at an aerodrome as part of the equipment . . ." By s. 32 (1) "'firearm' means any lethal . . . barrelled weapon . . . from which any shot, bullet, or other missile can be discharged . . ." The prosecutor appealed.

LORD GODDARD, C.J., said that the pistol was designed, so far as design had anything to do with the matter, as a signalling apparatus, which, it was significant to observe, was itself the subject of s. 6 (4). Obviously, in view of that subsection, it was intended that a signalling apparatus should be within the Act, for the subsection laid down the circumstances in which alone no certificate was needed in respect of it. The signal pistol here was a "lethal weapon" because that meant a weapon capable of causing injury. It also conformed to the remaining elements in the definition. The intention of the manufacturer or designer was immaterial. The question was simply whether the weapon was one which was capable of inflicting harm, being a barrelled weapon "from which any shot, bullet or other missile can be discharged." This signal pistol was that, and the case must accordingly be remitted to the magistrate with an intimation that the offence charged was proved.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Gattie.* The respondent did not appear and was not represented.

SOLICITOR: *Solicitor to Metropolitan Police.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Earp *v.* Roberts**

Lord Goddard, C.J., and Lewis, J. 13th December, 1946

*Pharmacy and Medicines—Advertisement of substance in periodical offering further information—Letter referring to substance as cure for tuberculosis—Pharmacy and Medicines Act*, 1941 (4 & 5 *Geo.* 6, *c.* 42), *ss.* 8 (1), 17 (1).

Case stated by Surrey Justices for the petty sessional division of Chertsey.

An information was preferred by the respondent on behalf of the Pharmaceutical Society of Great Britain alleging that the appellant contravened s. 8 (1) of the Pharmacy and Medicines Act, 1941, by taking part in the publication of an advertisement referring to an article called "Tassa" in terms calculated to lead to its use for the treatment of human beings for tuberculosis. The following facts were established before the justices: the appellant caused to appear in a periodical called "Health and Life" an advertisement referring to Tassa as an antiseptic for almost every form of disease, and stating "full information on application." The respondent caused a letter to be written to the appellant referring to the advertisement and asking for information. The appellant, in a letter replying, enclosed a circular and stated, *inter alia*, that Tassa cured tuberculosis. It was contended for the appellant that that letter was not an advertisement, but merely a private letter written in response to an inquiry. It was contended for the respondent that the letter was an advertisement within the meaning of s. 17 (1), and that the statement in it that Tassa was a cure for tuberculosis was in contravention of s. 8 (1). The justices convicted the appellant and fined him £40. He now appealed.

By s. 8 (1) of the Pharmacy and Medicines Act, 1941, it is forbidden "to take any part in the publication of any advertisement referring to any article . . . of any description in terms which are calculated to lead to the use of that article . . . for the treatment of human beings for any of the following diseases, namely . . . tuberculosis." By s. 17 (1), an advertisement includes "any notice, circular, label, wrapper or other document . . ."

LORD GODDARD, C.J., said that the justices had found, in his opinion rightly, that the three documents together—the advertisement in which full information was proffered to anyone who liked to ask for it, the circular (which was in itself an advertisement), and the letter which accompanied it—amounted to an advertisement that Tassa was a cure for tuberculosis. He thought that they had come not only to the right, but to the only possible, decision. Were it not so, every inventor of a quack remedy could avoid the Act by sending, when, in response to an advertisement, an application was made to him for information about the drug or medicine which he was selling, a circular with a letter saying that it was a cure for tuberculosis or other diseases which he was prohibited from offering to cure. The appeal was therefore dismissed.

LEWIS, J., agreed.

COUNSEL: *Fortune; Blanco White*, K.C., and *Mortimer.*

SOLICITORS: *Gale, Thomas & Son; A. C. Castle.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# PARLIAMENTARY NEWS

## HOUSE OF LORDS

Read First Time:—

MALTA (RECONSTRUCTION) BILL [H.C.] [4th February.

REMEDY AGAINST THE CROWN AS OCCUPIER BILL [H.L.] [4th February.

To provide a remedy against the Crown as occupier of premises, analogous to that now existing against a private occupier.

Read Second Time:—

EXCHANGE CONTROL BILL [H.C.] [4th February.

PENSIONS (INCREASE) BILL [H.C.] [6th February.

ROAD TRAFFIC (DRIVING LICENCES) BILL [H.C.] [6th February.

Read Third Time:—

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS) BILL [H.C.] [4th February.

## HOUSE OF COMMONS

Read First Time:—

NAVAL FORCES (ENFORCEMENT OF MAINTENANCE LIABILITIES) BILL [H.C.] [4th February.

To authorise deductions under the Naval and Marine Pay and Pensions Act, 1865, for the maintenance of wives and children;

to restrict the discontinuance of allotments of pay; and for purposes connected with the matters aforesaid.

TOWN AND COUNTRY PLANNING (SCOTLAND) BILL [H.C.] [7th February.

To make fresh provision with respect to Scotland for planning the development and use of land, for the grant of permission to develop land and for other powers of control over the use of land; to confer on public authorities additional powers in respect of the acquisition and development of land for planning and other purposes, and to amend the law relating to compensation in respect of the compulsory acquisition of land; to provide for payments out of central funds in respect of depreciation occasioned by planning restrictions; to secure the recovery for the benefit of the community of development charges in respect of certain new development; to provide for the payment of grants out of central funds in respect of expenses of local planning authorities in connection with the matters aforesaid; and for purposes connected with the matters aforesaid.

Read Second Time:—

APPELLATE JURISDICTION BILL [H.C. [7th February.

BIRTHS AND DEATHS REGISTRATION BILL [H.C.] [7th February.

COUNTY COUNCILS ASSOCIATION EXPENSES (AMENDMENT) BILL [H.C. [7th February.

ELECTRICITY BILL [H.C.] [4th February.

## QUESTIONS TO MINISTERS

### U.S. SERVICEMEN (DEPENDANTS IN U.K.)

Major BRAMALL asked the Secretary of State for Foreign Affairs what progress has been made in reaching agreement with the U.S. authorities on the maintenance of the children in this country of U.S. servicemen.

*Following is the answer:—*

As I informed my hon. and gallant friend in October last, this problem has been under informal discussion with the United States authorities. We proposed for their consideration that a fund should be established in this country, which would be supported by contributions from United States charitable organisations, or from other sources, and from which maintenance payments could be made in approved cases. In doing so, we realised that we were asking the United States to take a unique step, since no country has made corresponding arrangements for the maintenance of its servicemen's dependants in foreign countries. The State Department considered the proposal carefully and sympathetically, but have regretfully concluded that they cannot accept it. They are of the opinion that acceptance would create a precedent with far-reaching consequences, affecting other countries as well as themselves. However, the State Department have undertaken to give their fullest support to the efforts of welfare agencies, or other unofficial bodies, in the United States to get into touch with the United States ex-servicemen who have failed to maintain their dependants in the United Kingdom, or who are alleged to be the fathers of illegitimate children. Both our Embassy and Consular officers in the United States do all they can to help any British subjects who may need such assistance. We are, however, considering making legal aid available where necessary, and so far as may be reasonably practicable, in respect of legal proceedings in which such persons may be involved, and a full statement on this will be made very shortly. [3rd February.

### THE LANGUAGE OF ORDERS

Mr. BOYD-CARPENTER asked the Minister of Food what action he is proposing to take in view of the observations of the Lord Chief Justice of England, on the obscurity and incomprehensibility of the Eggs (Control and Prices) Order, 1944, as amended by S.R. & O., 1945, No. 645.

Mr. STRACHEY: I am considering the judgment of the Lord Chief Justice in the case of *Philips* v. *Brierley and Brear* and will make any amendment that may be necessary to the Eggs (Control and Prices) (Great Britain) Order as soon as possible.

Mr. BOYD-CARPENTER: In view of the fact that the highest permanent judicial officer of the land has stated that this Order was incomprehensible, is it not apparent to the Minister that it must be withdrawn?

Mr. STRACHEY: I am advised that the point turns largely on the use of the word "purchaser" for the word "consumer," which I do not think would be a very difficult amendment to make.

Mr. ASSHETON: Is the Minister aware that it is becoming a very general comment that it is almost impossible now for the average citizen to ascertain the law? [3rd February.

### PENSIONS APPEALS

Brigadier LOW asked the Minister of Pensions if he will make a statement on the progress of appeals made to the Arbitration Tribunals; and whether the administrative work involved in these appeals is carried out by the same persons who have previously supported the decisions appealed against or by a special staff.

Mr. WILFRED PALING: Approximately 12,600 applications have been received. Nearly 3,400 have been reviewed departmentally, of which 500 have been allowed. About 120 cases have been sent to the Special Review Tribunal and, in a further 130 cases, a statement of case has been sent to the applicant. A special section has been set up within my Department to deal with applications.

Mr. GODFREY NICHOLSON: What does the right hon. gentleman mean by "reviewed departmentally"? Does it mean that an effort has been made in these cases to get them an extra review?

Mr. PALING: This special tribunal was set up to deal with approximately the cases that had been reviewed before August last, but before they go to the tribunal we review them ourselves in our Department to see if we can do anything about them there. [4th February.

### GUARDIAN'S ALLOWANCE

Mr. HASTINGS asked the Minister of National Insurance what arrangements are proposed to ensure that orphans' benefit under the National Insurance Act will be used in the best interests of those concerned.

Mr. J. GRIFFITHS: There are no powers in the National Insurance Act to direct how this benefit, now termed guardian's allowance, is to be used. The allowance is, however, only payable where the orphan child is for the time being included in the guardian's family and if, for instance, on account of inadequate care, the child were removed from that person's family the allowance would no longer be payable to that guardian. [4th February.

### SPECIAL JURIES (QUALIFICATIONS)

Mr. WILLIAM WELLS asked the Attorney-General whether he will consider substituting educational for property qualifications for service on special juries.

Mr. TURNER-SAMUELS asked the Attorney-General whether he has any information to give the House as to the early introduction of legislation to abolish the distinction between special and common juries.

The ATTORNEY-GENERAL: I would refer my hon. friends to the reply given to the hon. members for Maldon (Mr. Driberg) and Mile End (Mr. Piratin) on 19th December last. As then stated, the subject of special juries is under consideration; no final decision has yet been reached, and my hon. friend's suggestion will receive consideration.

Mr. H. HYND: Will the right hon. and learned gentleman consider removing all restrictions? [6th February.

### JURORS (AGE LIMIT)

Mr. HENDERSON STEWART asked the Lord Advocate whether he will consider reducing the age limit of jurors to sixty, in view of the heavy strain which serving upon juries has proved to be on older men.

Mr. WESTWOOD: This question is receiving consideration in consultation with my right hon. friend the Home Secretary, but I am not yet in a position to make a statement. [6th February.

### DIVORCE PROCEEDINGS (U.S. EVIDENCE)

Sir JOCELYN LUCAS asked the Attorney-General if he is aware that British R.N. personnel who have married U.S. wives while on duty in the U.S.A. have in some cases been divorced for incompatibility or similar reasons; that their wives have since re-married; that, owing to the high cost of collecting evidence from the U.S.A. on starting proceedings over here, these men cannot re-marry; and what assistance, financial or otherwise, he will give in such cases.

The ATTORNEY-GENERAL: The collection of evidence in the type of proceedings to which my hon. friend refers is inevitably an expensive business, but I had not previously received any representations on this point. If the hon. member cares to let me have particulars of individual cases, I will be very glad to consider them. [6th February.

### MATRIMONIAL CAUSES (PROCEDURE)

Mr. HUTCHINSON asked the Attorney-General when it is proposed to introduce the procedural reforms recommended by Part II of the Second Interim Report of the Denning Committee.

The ATTORNEY-GENERAL: My noble friend the Lord Chancellor is in consultation with the President of the Probate, Divorce and Admiralty Division about the numerous and far-reaching

procedural changes advocated in Pt. II of the Second Interim Report of the Denning Committee, the majority of which have already been agreed upon. A number of the changes advocated have already been effected by administrative action. The alteration of the Matrimonial Causes Rules which will be required is a fairly formidable task with which much progress has already been made. It is, however, very desirable that the new Code of Rules should take account of the further procedural changes recommended in the Final Report of the Denning Committee which has only just been issued. I cannot, therefore, indicate now the date on which the new rules will be in operation.

Mr. SYDNEY SILVERMAN: Can my right hon. and learned friend tell the House whether action on these recommendations has been delayed in any way by the appointment by the President of the Probate, Divorce and Admiralty Division of a committee to consider them? Will he tell us who will form that committee, and whether their recommendations will be made available to the public?

The ATTORNEY-GENERAL: I am not aware that any delay has been occasioned in the way my hon. friend suggests. My noble friend the Lord Chancellor is, of course, in consultation with the President of the Probate, Divorce and Admiralty Division, who is inevitably and necessarily and properly involved in the consideration of these matters. I hope that a final decision on all the points, many of which, as I say, have already been agreed, will not long be delayed. [6th February.

### LITIGATION COSTS

Mr. REES-WILLIAMS asked the Attorney-General (1) in view of the fact that the acceptance of the recommendations of the Rushcliffe report does not lessen the cost of litigation but merely, in some degree, throws the burden on the State, and in view of the hardship imposed by the excessive cost of litigation on His Majesty's subjects, if he will appoint a committee to consider and make representations on the steps to be taken to secure a substantial reduction in this direction; (2) whether, in view of the exorbitant cost of proceedings in the High Court, he will introduce legislation to extend the jurisdiction of the county courts.

The ATTORNEY GENERAL: I would remind the hon. member that the Second Interim Report of the Committee on Procedure in Matrimonial Causes contains recommendations concerning the costs of petitions for divorce and has received the Government's approval. The Government are considering the advisability of setting up committees to consider other aspects of the cost of litigation, including the limits of county court jurisdiction.

Mr. REES-WILLIAMS: In view of the urgent nature of this matter, will the learned Attorney-General give the House some indication of when these committees are likely to be set up?

The ATTORNEY-GENERAL: At the moment I can only indicate that the matter is being given urgent consideration. [6th February.

### PROCEEDINGS AGAINST THE CROWN

Mr. TURNER-SAMUELS asked the Attorney-General (1) how many claims for damages in respect of injuries or loss owing to the alleged negligence or other breach of duty by an agent or servant of the Crown were pending against the Crown, in the form of legal proceedings already commenced at the time of the recent House of Lords decision in *Adams* v. *Naylor*; and what steps have been taken to ensure that these claimants' claims will be adjudicated and will not be deprived of the redress to which they may be justly entitled; (2) the number of claims for damages in respect of injuries or loss owing to the alleged negligence or other breach of duty by an agent or servant of the Crown made against the Crown since the case of *Adams and Naylor*; and what course, pending the passing by Parliament of the necessary legislation, has been taken to ensure that all legitimate claims will be met.

The ATTORNEY-GENERAL: The number of cases in the Treasury Solicitor's Department affected by the decision in *Adams* v. *Naylor* in which proceedings were pending at the time that decision was given was approximately fifty. The number of claims referred to the Treasury Solicitor since that judgment is approximately seventy-two. A number of these cases have been settled or negotiations for settlement are proceeding. Where no settlement is arrived at or where liability is repudiated, the Crown is prepared to submit the dispute to arbitration, and a number of submissions to arbitration have already been entered into. [6th February.

### EVICTION OF TENANTS

Mr. GALLACHER asked the Minister of Health (1) whether he will take the action necessary to protect tenants living in furnished or unfurnished rooms from unlawful eviction; whether he is aware that at present the police have no power to intervene as it is a civil offence; and if he will introduce amending legislation to enable the police to act in such matters; (2) if he will take steps to protect tenants occupying furnished rooms from persecution once they have appealed to a rent tribunal, and to make any attempts to prevent sub-tenants having access to their rooms an indictable offence.

Mr. BEVAN: I have delegated power to clerks of local authorities to requisition occupied premises in such cases of eviction or threatened eviction. [6th February.

### HOUSE OF LORDS AND PRIVY COUNCIL (APPEALS)

Mr. TURNER-SAMUELS asked the Attorney-General how many appeals of all kinds have been heard by the House of Lords and Privy Council, respectively, in each year during the past five years; how many appeals are now waiting to be heard by the House of Lords; and how many of them are appeals *in forma pauperis*.

The ATTORNEY-GENERAL: The information for which my hon. and learned friend asks is given below:—

I.

| — | Appeals heard by House of Lords. | Appeals* heard by Judicial Committee of the Privy Council. |
|---|---|---|
| 1942 .. | 36 | 37 |
| 1943 .. | 34 | 55 |
| 1944 .. | 16 | 54 |
| 1945 .. | 28 | 87 |
| 1946 .. | 32 | 53 |

* (not including petitions)

II.

Forty eight appeals are now waiting to be heard in the House of Lords.

III.

One appeal *in forma pauperis* is waiting to be heard in the House of Lords.

Mr. TURNER-SAMUELS asked the Attorney-General whether the present number of Lords of Appeal constantly available makes it possible for more than one final Court of Appeal for United Kingdom appeals to be constituted.

The ATTORNEY-GENERAL: No, sir. [6th February.

### MINING SUBSIDENCE

Miss LEE asked the Minister of Fuel and Power what progress is being made by the committee appointed to inquire into compensation claims arising from damage to property by mining subsidence.

Mr. SHINWELL: I understand that the committee is holding its first meeting next week. [6th February.

## NOTES AND NEWS

### Honours and Appointments

The King has approved the appointment of His Hon. Judge DONALD LESLIE FINNEMORE to be a Judge of the Probate, Divorce and Admiralty Division of the High Court of Justice.

The King has approved recommendations of the Home Secretary that Mr. H. H. MADDOCKS, Mr. W. B. FRAMPTON and Mr. LESLIE MARKS be appointed Metropolitan Magistrates; that Mr. L. A. VINE be appointed Recorder of Colchester in succession to Sir George Jones, K.C., resigned; and that Mr. CYRIL SALMON, K.C., be appointed Recorder of Gravesend in succession to Mr. M. L. BERRYMAN, K.C., who has been appointed Recorder of Dover.

Mr. Justice BYRNE (who was appointed to the Probate, Divorce and Admiralty Division in November, 1945) was transferred to the King's Bench Division on 10th February, by direction of the Lord Chancellor.

Mr. JOHN G. HILLIER, assistant solicitor, Tunbridge Wells, has been appointed deputy town clerk of Sutton and Cheam. He was admitted in 1936.

Mr. VLADIMIR ROBERT IDELSON, K.C., has been elected a Bencher of the Honourable Society of Lincoln's Inn in place of the late Lord Russell of Killowen.

LORD TEMPLEWOOD has accepted the office of President of the Howard League for Penal Reform.

## Notes

Sir Gilfrid Craig, D.L., of Messrs. Speechly, Mumford & Craig, solicitors, of Lincoln's Inn, Justice of the Peace since 1922 and Chairman of the Uxbridge Bench of Magistrates for fourteen years, has resigned the chairmanship.

Mr. Carol O'Daly, S.C., Attorney-General of Eire, speaking at the annual dinner of the Association of Certified and Corporate Accountants, said that the consolidation of Eire's statute law was at present in hand. He commented on a criticism that Eire's system of company and bankruptcy law was antiquated and absurd by saying that Standing Orders would apply in the Irish Parliament when consolidated statutes were presented for their consideration.

The usual monthly meeting of the directors of the Law Association was held on the 3rd February, 1947, Mr. S. Hewitt Pitt in the chair. The other directors present were: Messrs. C. A. Dawson, Douglas T. Garrett, Ernest Goddard, H. T. Traer Harris, G. D. Hugh Jones, Frank S. Pritchard, Wm. Winterbotham, and the secretary, Mr. Andrew H. Morton. The sum of £114 was voted in relief of deserving applicants and other general business was transacted.

The Union Society of London, which meets in the Barristers' Refreshment Room, Lincoln's Inn, at 8 p.m., will debate the following subjects in February, 1947: Wednesday, 19th February, "That the present foreign policy of the United States is a threat to world peace"; Wednesday, 26th February, "That a high standard of culture requires the existence of a leisured upper class." Further information may be had from the Hon. Secretary: Mr. W. G. Wingate, 2 Garden Court, Temple, E.C.4. 'Phone: Central 4741.

The Supreme Court in Eire has dismissed with costs an appeal by the Board of Assistance for the South Cork Public Assistance District from an order of the High Court (see 90 Sol. J. 384), declaring that Mr. Martin A. Harvey, a solicitor of South Mall, Cork, had since 15th March, 1938, been employed by the Board or their predecessors as solicitor on a taxed-costs basis and was entitled to be paid full costs for work done for them from 28th February, 1938, to 12th April, 1946. The Board had contended that Mr. Harvey was employed to do the work at a remuneration which should not exceed £250 in any one year.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26 Portland Place, W.1 (Tel.: LANgham 2127), on Thursday, 27th February, 1947, at 8.15 p.m., when a paper will be read by Mr. W. Harwood Carlisle, M.B., Ch.B., M.Sc., F.R.C.S., D.R.C.O.G., on: "Alleged manslaughter by excessive violence during coitus." The discussion following the paper will be opened by the Rt. Hon. Mr. Justice Humphreys. Members may introduce guests to the meeting. Any guest desiring to join in the discussion is requested to hand his or her name and qualifications to the Hon. Secretary on the slip provided for that purpose. Speeches are limited to five minutes each unless an extension is invited by the President. Refreshments will be served after the meeting.

# COURT PAPERS

## SUPREME COURT OF JUDICATURE

### HILARY SITTINGS, 1947

### COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

| Date. | Emergency Rota | Appeal Court I | Mr. Justice Vaisey |
|---|---|---|---|
| Mon., Feb. 17 | Mr. Blaker | Mr. Hay | Mr. Farr |
| Tues., ,, 18 | Andrews | Farr | Blaker |
| Wed., ,, 19 | Jones | Blaker | Andrews |
| Thurs., ,, 20 | Reader | Andrews | Jones |
| Fri., ,, 21 | Hay | Jones | Reader |
| Sat., ,, 22 | Farr | Reader | Hay |

| | Group A | | Group B | |
|---|---|---|---|---|
| Date. | Mr. Justice Roxburgh *Non-Witness.* | Mr. Justice Wynn-Parry *Witness.* | Mr. Justice Evershed *Witness.* | Mr. Justice Romer *Non-Witness* |
| Mon., Feb. 17 | Mr. Reader | Mr. Jones | Mr. Blaker | Mr. Andrews |
| Tues., ,, 18 | Hay | Reader | Andrews | Jones |
| Wed., ,, 19 | Farr | Hay | Jones | Reader |
| Thurs., ,, 20 | Blaker | Farr | Reader | Hay |
| Fri., ,, 21 | Andrews | Blaker | Hay | Farr |
| Sat., ,, 22 | Jones | Andrews | Farr | Blaker |

# STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

| | Div. Months | Middle Price Feb. 10 1947 | Flat Interest Yield £ s. d. | ‡ Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **British Government Securities** | | | | |
| Consols 4% 1957 or after | FA | 117¼ | 3 8 3 | 1 19 6 |
| Consols 2½% | JAJO | 98½ | 2 10 10 | — |
| War Loan 3% 1955–59 | AO | 109½ | 2 14 10 | 1 13 10 |
| War Loan 3½% 1952 or after | JD | 108⅛ | 3 4 6 | 1 19 5 |
| Funding 4% Loan 1960–90 | MN | 122½ | 3 5 5 | 2 0 5 |
| Funding 3% Loan 1959–69 | AO | 109½ | 2 14 10 | 2 1 4 |
| Funding 2¾% Loan 1952–57 | JD | 105¾ | 2 12 0 | 1 12 6 |
| Funding 2½% Loan 1956–61 | AO | 105½ | 2 7 5 | 1 16 3 |
| Victory 4% Loan Av. life 18 years | MS | 122½ | 3 5 4 | 2 8 9 |
| Conversion 3½% Loan 1961 or after | AO | 115¾ | 3 0 5 | 2 3 7 |
| National Defence Loan 3% 1954–58 | JJ | 108¼ | 2 15 5 | 1 12 3 |
| National War Bonds 2½% 1952–54 | MS | 104⅛ | 2 8 0 | 1 14 7 |
| Savings Bonds 3% 1955–65 | FA | 108 | 2 15 7 | 1 17 11 |
| Savings Bonds 3% 1960–70 | MS | 108⅜ | 2 15 2 | 2 5 3 |
| Treasury 2½% | AO | 99½ | 2 10 3 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 101 | 2 19 5 | — |
| Guaranteed 2¾% Stock (Irish Land Act, 1903) | JJ | 101 | 2 14 5 | — |
| Redemption 3% 1986–96 | AO | 116¾ | 2 11 4 | 2 6 9 |
| Sudan 4½% 1939–73 Av. life 16 years | FA | 127 | 3 10 10 | 2 8 10 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 118 | 3 7 10 | — |
| Tanganyika 4% Guaranteed 1951–71 | FA | 107 | 3 14 9 | 2 2 6 |
| Lon. Elec. T.F. Corp. 2½% 1950–55 | FA | 101½ | 2 9 3 | 2 0 0 |
| **Colonial Securities** | | | | |
| *Australia (Commonw'h) 4% 1955–70 | JJ | 114 | 3 10 2 | 2 3 5 |
| Australia (Commonw'h) 3½% 1964–74 | JJ | 112 | 2 18 0 | 2 7 6 |
| *Australia (Commonw'h) 3% 1955–58 | AO | 106½ | 2 16 4 | 2 2 11 |
| †Nigeria 4% 1963 | AO | 124 | 3 4 6 | 2 5 7 |
| *Queensland 3½% 1950–70 | JJ | 104½ | 3 7 0 | 1 19 2 |
| Southern Rhodesia 3½% 1961–66 | JJ | 115 | 3 0 10 | 2 4 10 |
| Trinidad 3% 1965–70 | AO | 112 | 2 13 7 | 2 4 5 |
| **Corporation Stocks** | | | | |
| *Birmingham 3% 1947 or after | JJ | 101½ | 2 19 1 | — |
| *Leeds 3¼% 1958–62 | JJ | 109 | 2 19 8 | 2 6 1 |
| *Liverpool 3% 1954–64 | MN | 105½ | 2 16 10 | 2 2 8 |
| Liverpool 3¼% Red'mable by agreement with holders or by purchase | JAJO | 130 | 2 13 10 | — |
| London County 3% Con. Stock after 1920 at option of Corporation | MSJD | 101¼xd | 2 19 1 | — |
| *London County 3½% 1954–59 | FA | 110 | 3 3 8 | 2 0 11 |
| *Manchester 3% 1941 or after | FA | 101½ | 2 19 1 | — |
| *Manchester 3% 1958–63 | AO | 108 | 2 15 7 | 2 4 5 |
| Met. Water Board "A" 1963–2003 | AO | 109 | 2 15 1 | 2 6 2 |
| * Do. do. 3% "B" 1934–2003 | MS | 101xd | 2 19 5 | — |
| * Do. do. 3% "E" 1953–73 | JJ | 105 | 2 17 2 | 2 2 1 |
| Middlesex C.C. 3% 1961–66 | MS | 108xd | 2 15 7 | 2 6 6 |
| *Newcastle 3% Consolidated 1957 | MS | 106xd | 2 16 7 | 2 7 5 |
| Nottingham 3% Irredeemable | MN | 112 | 2 13 7 | — |
| Sheffield Corporation 3¼% 1968 | JJ | 118 | 2 19 4 | 2 8 0 |
| **Railway Debenture and Preference Stocks** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 124½ | 3 4 3 | — |
| Gt. Western Rly. 4½% Debenture | JJ | 125½ | 3 11 9 | — |
| Gt. Western Rly. 5% Debenture | JJ | 137½ | 3 12 9 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 134½ | 3 14 4 | — |
| Gt. Western Rly. 5% Cons. G'rteed. | MA | 133½ | 3 14 11 | — |
| Gt. Western Rly. 5% Preference | MA | 123½ | 4 1 0 | — |

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated the earliest date; in the case of other Stocks, as at the latest date.

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